390.

SUPREME COURT OF THE UNITED STATES.

No. 50.

THE PRESIDENT, RECORDER, AND TRUSTEES OF THE CITY OF CINCINNATI, PLAINTIFFS IN ERROR,

VERSUS

EDWARD WHITE'S LESSEE.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE OHIO DISTRICT.

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Pleas begun and held at the court-house in the town of Columbus, on Monday, the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, and of the independence of the United States the fifty fourth, before the Honorable John McLean and John W. Campbell, Judges of the circuit court of the United States in and for the seventh circuit and district of Ohio.

JOHN DOE, ex. dem. of EDWARD WHITE, plaintiff,
versus
The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, defendants. } *Ejectment.*

Be it remembered, that, heretofore, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-six, and of the forty eighth year of the American independence, came John Doe, on the demise of Edward White, a citizen and resident of the State of Missouri, by

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William Creighton, jun., his attorney, and filed a certain declaration in an action of ejectment against Richard Fenn, a citizen of and resident in the State of Ohio, which is in the words and figures following, to wit:

THE UNITED STATES' CIRCUIT, DISTRICT OF OHIO, to wit:

John Denn, a citizen of the State of Missouri, complains of Richard Fenn, a citizen of the State of Ohio, in custody, &c., of a plea of trespass with force and arms, &c.; for that whereas one Edward White, a non-resident of the State of Ohio, a citizen of the State of Missouri, on the first day of March, eighteen hundred and twenty-six, at the county of Hamilton, in the said district, and within the jurisdiction of the circuit court of the United States, in and for the said district, had demised, granted, and to farm let, to the said John Denn, a certain lot or parcel of ground, situate, lying, and being in the city of Cincinnati, in county aforesaid, and within the jurisdiction aforesaid, being the north half of lot number four hundred and sixty-five, lying in front of lot number seventy-six on the bank of the Ohio river, with the appurtenances, to the said John Denn and his assigns, for and during the full end and term of fifty years from thence next following, and fully to be complete and ended; by virtue of which said demise the said John Denn entered into the premises aforesaid, and was thereof possessed, and being so thereof possessed, the said Richard Fenn afterwards, to wit, on the second day of March, in the year eighteen hundred and twenty-five, at the county aforesaid, and within the jurisdiction aforesaid, with force and arms, entered into the premises aforesaid, with the appurtenances, which the said Edward White had demised to the said John Denn in manner aforesaid, for the time aforesaid, which is not yet expired, and ejected and amoved the said John Denn from his said premises, and other wrongs to the said John Denn then and there did, against the peace and dignity of the United States, and to the damage of the said John Denn of $5,000, and therefore he brings suit, &c.

CREIGHTON, *P. Q.*

JOHN DOE, *vs.* RICHARD ROE, } *Pledges.*

To Lewis Howell, Samuel Newell, William Stevenson, Oliver Lovell, Charles Tatem, Ebenezer Hulse, James McIntire, William Noble, Septimus Hazen, Stephen Burrows, John Whetstone, Henry Gassaway, President, Recorder, and Trustees of the city of Cincinnati.

GENTLEMEN: I am informed that you are in possession of and claim title to the premises in the within declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the same, do advise you to appear before the circuit court of the United States, for the seventh circuit, within and for the district of Ohio, on the first day of the next June term, and by some attorney of that court, cause yourselves to be made defendants in my stead, otherwise I shall suffer judgment to be rendered against me by default, and you will be turned out of possession.

Yours, &c.,

April 12th, 1826. RICHARD FENN.

THE UNITED STATES OF AMERICA, DISTRICT OF OHIO, ss. } *Circuit court.—July term*, 1826.

William Doherty this day came into court, and made solemn oath that he served the within named Lewis Howell, Samuel Newell, William Stevenson, Oliver Lovell, Charles Tatem, Ebenezer Hulse, James McIntire, William Noble, Septimus Hazen, Stephen Burrows, John Wetstone, and Henry Gassaway, the president, recorder, and trustees of the city of Cincinnati, by copy delivered to each, on the 26th day of April, 1826.

WM. DOHERTY.

Sworn to and subscribed in open court, 12th July, 1826.

Attest, WM. KEY BOND, *Clk.*

And thereupon came the plaintiff, by his attorney, and Lewis Howell, Samuel Newell, William Stevenson, Oliver Lovell, Charles Tatem, Ebenezer Hulse, James McIntire, William Noble, Septimus Hazen, Stephen Burrows, John Wetstone, Henry Gassaway, the president, recorder, and trustees of the city of Cincinnati, on whom the notice in this cause, together with a copy of the declaration, has been duly served, as appears by the affidavit of William Doherty, more than ten days before the commencement of the present term, being thrice solemnly called, came not, nor do they in any manner defend this suit; and Richard Fenn, the casual ejector, being also called, and not appearing, it is therefore ordered, that unless the said Richard Fenn, or the person or persons under whom he claims, or some one of them, shall appear here to the declaration aforesaid, at or before the next term, and make himself, herself, or themselves defendants, in the room of the now defendants, plead not guilty, and confess the lease, entry and ouster in the declaration supposed, and agree to insist on the title only at the trial, judgment by default will be entered at the next term against the casual ejector. And thereupon this cause was continued.

And afterwards, to wit, on the 22d day of August, in the year of our Lord one thousand eight hundred and twenty-six, the following common order issued out of the clerk's office of the court here, to wit:

Circuit court of the United States, seventh circuit, Ohio district.

JOHN DENN, on the demise of Edward White, plaintiff, *vs.* RICHARD FENN, LEWIS HOWELL, et al., defendants. } *July term*, 1826, *Saturday 22d.—Eject. for north half of in lot, in the city of Cincinnati, No.* 465.

This day came the plaintiff, by his attorney, and Lewis Howell, Samuel Newell, William Stevenson, Oliver Lovell, Charles Tatem, Ebenezer Hulse, James McIntire, William Noble, Septimus Hazen, Stephen Burrows, John Wetstone, Henry Gassaway, the president, recorder, and trustees of the city of Cincinnati, on whom the notice in this cause, together with a copy of the declaration, has been duly served, as appears by the affidavit of William Doherty, more than ten days before the commencement of the present term, being thrice solemnly called came not, nor do they in any manner defend this suit; and Richard Fenn, the casual ejector, being also called, and not appearing, it is therefore ordered, that unless the said Richard Fenn, or

the person or persons under whom he claims, or some or one of them, shall appear here to the declaration aforesaid, at or before the next term, and make himself, herself, or themselves defendant or defendants in the room of the now defendant, plead not guilty, and confess the lease, entry, and ouster, in the declaration supposed, and agree to insist on the title only at the trial, judgment by default will be entered against the casual ejector at the next term. August 22d, 1826.

Attest, WM. KEY BOND, *Clk.*

And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty-six, came the marshal of the district of Ohio aforesaid, and made return of the aforegoing common order, with the following return endorsed thereon, to wit:

"I have served the within by delivering to each of the defendants within named a copy of this order. Oct. 25th, 1826.

WM. DOHERTY, *Mar. of the D. of O.*"

And thereupon came the parties, by their attorneys, and, by consent, the president, recorder, and trustees of the city of Cincinnati are made defendants in the room of the now defendant, Richard Roe, the casual ejector; and the said president, recorder, and trustees of the city of Cincinnati confess the lease, entry, and ouster, in the declaration supposed, and agree to insist upon the title only at the trial, and for plea say that they are not guilty of the trespass and ejectment in the declaration mentioned, in manner and form as the plaintiff therein against them complains, and of this they put themselves upon the country for trial; and the plaintiff doth the like; therefore let a jury come, &c. And thereupon this cause was further continued.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-seven, came the parties, by their attorneys, and thereupon came a jury, to wit: Lyne Starling, Ebenezer Buckingham, Charles Lofland, John Warner, Francis Stewart, Robert Brotherton, Jarvis Pike, Len Duffy, John Peebles, Henry Brown, Robert W. McCay, and Lemuel Reynolds, who are elected, tried, and sworn, the truth to speak upon the issue joined; and the plaintiff being called to prosecute his said suit came not, but made default, nor is his suit further prosecuted. Whereupon the plaintiff afterwards came into court, by his attorney, and on his motion the nonsuit aforesaid is set aside, and leave given the plaintiff to amend his declaration, on the payment of the costs of this term and of the amendment. And thereupon the said plaintiff files his amended declaration in this cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA, OHIO DISTRICT, ss.

United States' circuit court, seventh circuit and district of Ohio, July term, A. D. 1827.

Richard Roe, a citizen and resident of the State and district of Ohio, was attached to answer John Doe, a citizen and resident of the State of Missouri, wherefore he, the said Richard Roe, with force and arms, &c., entered into a certain tract or parcel of land, described as follows, to wit: the north half of lot known on the plat of the city of Cincinnati by No. 446, four hundred and sixty-six, and bounded on the north by Front street, and lying in front of lot No. 76, with the appurtenances, situate and being in the city of Cin-

cinnati and district aforesaid, which Edward White, of the State of Missouri, had demised to the said John Doe for a term which is not yet expired, and ejected him from his said farm.

And also wherefore, the said Richard Roe, with force and arms, &c., entered into a certain tract or parcel of land, described as follows, viz: the north half of lot No. 465, four hundred and sixty-five, as known and described on the recorded plat of the city of Cincinnati, bounded on the north by Front street, and lying in front of lot No. 76, as described on the plat of said city of Cincinnati; other messuages, with the appurtenances, in the county of Hamilton and district aforesaid, which the said Edward White had demised to the said John Doe for a term which is not yet expired, and ejected him from his said last mentioned farm.

And also wherefore, the said Richard Roe, with force and arms, &c., entered into one acre of land, with the appurtenances, situate being in the city of Cincinnati and district aforesaid, which the said Edward White had demised to the said John Doe for a term which is not yet expired, and ejected him from his said last mentioned farm; and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the United States.

And thereupon the said John Doe, by Joseph S. Benham, his attorney, complains, that whereas the said Edward White, on the third day of June, A. D. 1826, at the district aforesaid, had demised to the said John Doe the said tenements, with the appurtenances first as above mentioned, to have and to hold the same to the said John Doe and his assigns, from second day of June, in the year aforesaid, for and during and until the full end and term of ten years thence next ensuing, and fully to be complete and ended.

And also, that whereas the said Edward White, on the said third day of June, in the year aforesaid, at the district aforesaid, had demised to the said John Doe the said tenements, with the appurtenances secondly above mentioned, to have and to hold the same to the said John Doe and his assigns, from the said 2d second day of June, in the year aforesaid, for and during and until the full end and term of ten years from thence next ensuing, and fully to be complete and ended.

And also, that whereas the Edward White, on the said third day of June, in the year aforesaid, at the district aforesaid, had demised the said tenements, with the appurtenances thirdly above mentioned, to have and to hold the same to the said John Doe and his assigns, from the said second day of June, in the year aforesaid, for and during and until the full end and term of ten years, from thence next ensuing, and fully to be complete and ended.

By virtue of which said several demises, the said John Doe entered into the said several tenements, firstly, secondly, and thirdly above mentioned, with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof respectively granted as aforesaid. And the said John being so thereof possessed, the said Richard Roe afterwards, to wit, on the tenth of August, in the year aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, firstly, secondly, and thirdly above mentioned, in which the said John Doe was so interested in manner for the several terms aforesaid, which are not yet expired, and ejected the said John Doe from his said several farms; and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the State of Ohio. Wherefore the said John

Doe saith that he is injured; and hath sustained damage to the value of two hundred dollars, and therefore he brings his suit, &c.

JOSEPH S. BENHAM, *Att'y for Pl'tff.*

To the President, Recorder, and Trustees of the city of Cincinnati, Messrs. Lewis Howell, Oliver Lovell, Bellamy Storer, Dan. Stone, Samuel R. Miller, Stephen Burrowes, James McIntire, William Philips, Samuel Newell, Charles Tatem, Joshua H. Perry, Gurden R. Gilmore, Fullem Perry, Samuel Borden, J. Penthews, J. Holcombe:

GENTLEMEN: I am informed that you are in possession of or claim title to, the premises in this declaration mentioned, or to some part thereof; I being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of next December term, in the seventh circuit court of the United States, Ohio district, by some attorney of this court, and then and there, by a rule of the same court, to cause yourselves to be made defendants in my stead, otherwise I will suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this 24th day of November, A. D. 1827.

Yours, &c.,

RICHARD ROE.

And thereupon this cause was further continued.

And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty-seven, this cause was further continued by the adjournment of said court by the marshal of said district, on account of neither of the judges of said court attending, according to the act in such case made and provided.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-eight, this cause was further continued.

And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty-eight, this cause was further continued.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-nine, came the parties by their attorneys, and thereupon came a jury, to wit: Samuel McCord, Thomas Gillespie, John Moore, Daniel Black, William A. Camron, Benjamin Briggs, Rezin Bell, William Arnold, James Turnebull, William C. McCausland, John Thompson, and James Wright, who were elected, tried, and sworn the truth to speak upon the issue joined; but the examination of the testimony not being completed, the court adjourned the jury until tomorrow, to which time this cause is continued.

And afterwards, in this same term, to wit, on the 17th day of July, the jury came into court, and not agreeing upon their verdict, by consent, Rezin Bell, one of the jurors aforesaid, is withdrawn, and the rest of the jurors discharged from rendering a verdict herein, and this cause is continued.

And now at this day, to wit, the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, and of the American independence the 54th, came the parties by their attorneys, and thereupon, for trying the issue, came a jury, viz: Robert Mitchel, Benja-

min Johns, James Sharp, John Alben, Lewis Dilla, David Todd, Edmund Darr, John M. Clenehan, William Vance, Martin Armstrong, Moses Morehead, and John McCay, who being empannelled, elected, tried, and sworn the truth to speak upon the issue joined; but the examination of the cause not being completed, the court adjourned the jury until tomorrow; and thereupon the jury were adjourned over, from day to day, until the 2d day of January, in the year of our Lord one thousand eight hundred and thirty.

And thereupon the jury in this cause returned into court, and upon their oath do say, that the defendants are guilty of the trespass in the plaintiff's declaration mentioned, and do assess the plaintiff's damages at one cent. It is therefore considered by the court, that the plaintiff recover of the defendants his term yet to come and unexpired, in the premises aforesaid, together with one cent, the damages by the jurors aforesaid in their verdict assessed, and also his costs herein expended; and it is ordered that a writ of possession issue accordingly upon the application of the plaintiff.

During the progress of this cause the defendants, by their counsel, tendered a bill of exceptions to the opinion of the court, upon the points in said bill of exceptions mentioned, and prayed that the same might be signed, sealed, and enrolled, and made a part of the record in this cause, which is accordingly done; which said bill of exceptions is in the words and figures following, to wit:

The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *versus* JOHN DOE, ex dem. EDWARD WHITE.	*7th Circuit, Ohio District. Ejectment, for lot* 465, *in front of lot* 76, *in Cincinnati.*

The plaintiff offered in evidence, to sustain his action, the deed, marked A, from John C. Symmes to Joel Williams, dated 14th February, A. D. 1800, which deed is in the words and figures following, to wit:

This indenture, made the fourteenth day of February, in the year eighteen hundred, between John Cleves Symmes, of North Bend, in the county of Hamilton, and territory of the United States northwest of the river Ohio, of the first part, and Joel Williams, of Cincinnati, in the county of Hamilton aforesaid, witnesseth, that the said John Cleves Symmes, for and in consideration of the sum of one hundred and fourteen dollars, to him in hand well and truly paid, at or before the ensealing and delivery hereof, by the said Joel Williams, the receipt whereof the said John Cleves Symmes doth hereby acknowledge, and thereof and therefrom doth clearly acquit, exonerate, and discharge the said Joel Williams, his executors and administrators, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, alien, enfeoff, convey, and confirm, unto the said Joel Williams and to his heirs and assigns forever, all those two following described tracts or fractions of land, lying in the front of the town of Cincinnati, and in the seventeenth fractional section in the fourth fractional township and first fractional range of townships in the Miami purchase, and in the county of Hamilton aforesaid; the two fractions hereby granted and conveyed are described as follows, viz: the first tract or fraction of land being all that fraction lying east of and adjoining to the town lot in Cincinnati, No. four hundred and forty, and south of the east end of Water street, and adjoining along the bank of the Ohio river, and extending up along the Ohio river, between Water street and the Ohio, until Water street terminates at the east

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end thereof. Also, all that second fraction or tract of land lying east of and adjoining to the town lot in Cincinnati, No. four hundred and one, and south of the east end of the Front street, so called in Cincinnati, and adjoining along the bank of the Ohio river, and extending up along the Ohio, between Front street and the Ohio, until it comes to fractional section No. eleven, in the aforesaid fractional township, be the contents in acres of the said two fractions above described more or be they less, as they are laid down and platted on the map and survey of the town of Cincinnati aforesaid. Together with all and singular the privileges and appurtenances to the same two fractions, be they more or less, belonging or in any way appertaining; to have and to hold the said two fractions or plats of land, with their privileges, unto the said Joel Williams, to the only proper use, benefit, and behoof of the said Joel Williams, and of his heirs and assigns forever. And the said John Cleves Symmes, for himself and his heirs, doth covenant with the said Joel Williams and with his heirs and assigns, that at the time of the ensealing and delivery hereof, he, the said John Cleves Symmes, is lawfully seized of the same by purchase from the United States. And doth further covenant with the said Joel Williams, that all and singular the premises and appurtenances to the same two tracts or parcels belonging, or in any way appertaining, according to the plan of the town, as may appear by the map and plat thereof, unto the said Joel Williams, and to his heirs, executors, and assigns, against all manner of claims or superior rights whatsoever, lawfully claiming title or right of sale to the same two fractions, he, the said John Cleves Symmes, and his heirs, executors, and administrators, shall and will well and truly warrant and for ever by these presents defend.

In testimony whereof, the said John Cleves Symmes, together with Susan his wife, who hereby relinquishes her right of dower in the premises and two fractions of land above described, have hereunto severally set their hands, and affixed their seals, the day and year aforesaid.

JOHN CLEVES SYMMES. [SEAL.]

Sealed and delivered in presence of
HENRY KER, PHINEAS HALE.

HAMILTON, ss.

Before me, Joseph Prince, one of justices assigned to keep the peace in said county, personally came Henry Ker, one of the subscribing witnesses to the within instrument, who being duly sworn, on his oath doth say, he saw John C. Symmes, the grantor, subscribe the same, and heard him acknowle it to be his hand and seal, for the purposes herein mentioned. In testimony whereof, I have hereunto put my hand and seal, the 15th day of Feb., 1800.

JOSEPH PRINCE. [SEAL.]

Rec'd the 14th Feb. 1800, recorded 20th of same month, in book C, vol. 4th, pages 299 and 300.

O. M. SPENCER, *D. R. H. County.*

To the introduction of this deed the defendants, by their counsel, objected, until the map or survey of the town of Cincinnati, on which the property conveyed by said deed was described and referred to in said deed, was first produced, or its non-production accounted for. This objection the court overruled, and permitted parol evidence to be given of the location of said

premises and the lots in said deed referred to; to which opinion of the cour the defendants, by their counsel, except, and pray this their bill may be sealed.

The plaintiff then offered in evidence a deed from Joel Williams to John Dailey, dated 16th April, Anno Domini 1800, for lot 466, lying in front of lot 76, which deed is marked B; which deed is in the words and figures following, to wit:

This indenture, made this sixteenth day of April, A. D. 1800, in the year of our Lord 1800, between Joel Williams, of the county of Hamilton, and territory of the United States northwest of the river Ohio, of the first part, and John Dailey, of the same place, of the other part, witnesseth, that the said Joel Williams, for and in consideration of one hundred and fifty dollars, to him in hand well and truly paid, at or before the ensealing and delivery hereof, by the said John Dailey, the receipt whereof the said Joel Williams doth hereby acknowledge, thereof and therefrom doth clearly acquit, exonerate, and discharge the said John Dailey, his executors and administrators, have given, granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do fully give, grant, bargain and sell unto the said John Dailey, his heirs and assigns for ever, all that north half of lot No 466, bounded on the north by Front street, lying in front of lot No. 76, being four perches and 22½ links wide, of land, situate and being in the town of Cincinnati, in the county aforesaid, in the Miami purchase, being a part of the seventeenth fractional section in the fourth township and first fractional range; which lot contains 29 perches and upwards, being six perches long on Front street, together with all and singular the privileges and appurtenances to the said lot belonging or in any wise appertaining; to have and to hold the before granted premises, with the appurtenances and privileges thereunto belonging, to the said John Dailey, and his heirs and assigns, for their own proper use, benefit, and behoof, forever. And the said Joel Williams, for himself and his heirs, executors, and administrators, doth covenant, promise, and agree unto and with the said John Dailey, and his heirs and assigns, that at the time of the ensealing and delivery hereof, he is the true, sole, and lawful owner, and is lawfully seized of the same by purchase from John Cleves Symmes, and hath in himself full power and lawful authority to sell and convey the same in manner aforesaid; and the said Joel Williams doth further covenant with the said John Dailey, and his heirs and assigns, that all and singular the premises and lot aforesaid unto the said John Dailey, and his heirs and assigns, against all lawful claims and demands whatsoever, he, the said Joel Williams and his heirs will well and truly warrant and for ever by these presents defend.

In witness whereof, the said Joel Williams, together with Phebe his wife, who hereby relinquishes her right of dower in the premises, have hereunto severally set their hands, and affixed their seals, the day and year aforesaid.

JOEL WILLIAMS, [SEAL.]
PHEBE WILLIAMS. [SEAL.]

Sealed and delivered in the presence of
JAMES KEMPER, O. M. SPENCER.

N. B. The interlineation of the words "John Cleves Symmes," and the erasure "United States," was made before the delivery hereof.

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Territory of the United States northwest of the river Ohio, Hamilton County, ss.

Be it remembered, that, on the nineteenth day of April, in the year of Christ eighteen hundred, personally appeared before me, the subscriber, one of the justices assigned to keep the peace in said county, Oliver M. Spencer, one of the within subscribing witnesses, and being duly sworn according to law, saith, that he was present and saw Joel Williams and Phebe his wife, the within grantors, sign the within instrument of writing and deliver it as their act and deed. In testimony whereof, I have set my hand and affixed my seal, the day and year aforesaid.

JOSEPH PRINCE. [SEAL.]

I do hereby certify, that the foregoing deed is truly copied from the record thereof, now remaining in my office. 14th Sep., 1818.

THOMAS HENDERSON, *Recorder of Ham. C'ty. O.*

On the aforegoing deed is the following endorsement, to wit: " O. M. Spencer.

The above name of O. M. Spencer was written by him in my presence, at the time of taking his deposition, and is the same paper referred to in his deposition.

ENOS WOODRUFF, *A. J. H. County.*"

To the introduction of which deed, so far as to convey any specific lot, the defendants also objected, unless the map or plat of said town of Cincinnati was first produced, to shew the location of said lot, and the lots referred to in said deed, as the boundaries of said lot 466, or the non-production of said map first accounted for. This objection the said court overruled, and permitted parol evidence of the location of said lot to be given; to which opinion of said court the said defendants, by their counsel, except, and pray this their bill to be sealed. The said defendants also objected to the introduction of said deed in evidence, which was only a copy, as aforesaid, until sufficient evidence of the existence and loss of the original was produced.

Jacob White was thereupon examined as a witness, who proved that, subsequent to the execution of this deed, he became the purchaser of the lot referred to, and when his grantor executed to him the deed therefor, he handed him the original deed, of which the paper offered was a copy; that he, White, had made diligent search for the original, and could not find it, and believed it to be lost.

The deposition of Oliver M. Spencer, marked E, was thereupon offered and read to prove the execution of said deed, his name appearing thereto as subscribing witness; which deposition is in the words and figures following, to wit:

Circuit Court of the United States for the District of Ohio.

JOHN DOE, ex dem. Edward White,
versus
The PRESIDENT, RECORDER, and TRUSTEES of Cincinnati. } *In ejectment.*

Be it remembered, that, on the 25th day of December, 1829, before me, Enos Woodruff, one of the associate judges of the court of common pleas of Hamilton county, State of Ohio, came Oliver M. Spencer, who being by me carefully examined, cautioned, and sworn to testify the whole truth, did

depose and say, that he is a subscribing witness to a deed from Joel Williams and wife to John Dailey, bearing date the 16th day of April, 1800, for the north half of lot No. 466, in Cincinnati, bounded on the north by Front street, and in which deed it is mentioned as lying in front of lot No. 76, and being four perches and twenty-two and a half links wide, and which deed was recorded by me on the 21st day of April, 1800.

Oliver M. Spencer further deposes, and says, that on the 19th day of April, 1800, he appeared before Joseph Prince, a justice of the peace, and proved the execution of said deed, as appears from the record of said deed; and although he has now no distinct recollection of having proved the execution of said deed, so long a time having since elapsed, yet he knows that he recorded said deed in his own hand writing, within a few days after the execution of said deed. That said record states that this deponent did attest to the execution of said deed, before said Joseph Prince, a justice of the peace, and that this deponent would not so have recorded said deed, had the fact not been as stated on said record; and this deponent further says, that a deed is now shewn him on which he has written his name, and which he has recorded, is a copy from the record of the original deed above referred.

Question by defendants' counsel. Will you state at what time you first became acquainted with Cincinnati, and what you know was the reputation of the grounds lying between Front street and the Ohio river; and Main street and Broadway, being a public common, if you know any thing on that subject?

Answer. I first became acquainted with Cincinnati in the summer of seventeen hundred and ninety one. I know nothing of the character of the ground lying between Front street and Broadway and between Front street and the Ohio river, previous to the year seventeen hundred and ninety-eight; I then supposed it to be a common, probably from the fact of its being open.

Question by the same. You state you have no distinct recollection of the execution of the deed from Joel Williams and wife to Dailey; will you state whether you can now state any thing about the execution of said deed, without reference to said recorded deed, or without having lately looked at said deed?

Answer. I cannot tell; I have now an indistinct recollection, or perhaps an impression on my mind, of having proved the execution of said deed; but whether this impression is made from the fact of my having recorded the deed I know not. I boarded with Joseph Prince at the date of the deed.

Question by plaintiff's counsel. Do you know whether there was ever a blacksmith shop upon any part of ground above referred to? If so, state where it was, and at what time it was standing; and what other buildings were there on the premises, and of what character were they?

Answer. I believe there was a blacksmith shop on the ground referred to, between Sycamore and Main street, in the year 1795; there was also, about the same time, or about 1796, a market house at the foot of Sycamore street, standing partly in said street and partly on said ground referred to. From the year 1798 to the year 1801 or 1802, I believe there was no building or improvement on said ground; I have no recollection of the state of said ground after 1802, until 1807, when there was a brick building on said ground, at the corner of Main and Front streets. Sometime afterwards a framed building was erected on said ground, between Main and Sycamore streets, as I understood, by Jacob White or Edmund White, which house, as I understood, was pulled down by some of the citizens of Cincinnati in

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an unlawful manner. The blacksmith shop referred to was owned or occupied, as I believe, by John Riddle.

O. M. SPENCER.

Same time and place came Calvin Washburn, who being likewise first carefully examined, cautioned, and sworn to testify the whole truth, does depose and say, that he took possession of a warehouse, standing on the south side of Front street, in the city of Cincinnati, nearly opposite the then dwelling house of Jesse Hunt, between Main and Sycamore streets and on the ground called the common, sometime in the year eighteen hundred thirteen or fourteen, which house I occupied, as near as I can recollect, about two years, at four dollars per month, which rent I paid to Edward White, son of Jacob White, and continued in the occupancy of said house until some time in the year eighteen hundred fifteen or sixteen, when I was prevented the further occupancy by finding the house thrown partly off its foundation, and otherwise materially injured; and it is my opinion, that from the time the house was thrown down up to the year eighteen hundred and twenty it would have rented for seventy-five dollars per year, and from the last mentioned period to eighteen hundred and twenty-four it would have rented for one hundred dollars per year, and from the last mentioned period to the year eighteen hundred and thirty it would have rented for one hundred and twenty-five dollars per year.

CALVIN WASHBURN.

Defendants' counsel objected to the competency of this last deposition.

I, Enos Woodruff, one of the associate judges of the court of common pleas in and for Hamilton county, do herby certify, that the preceding depositions of O. M. Spencer and Calvin Washburn, were taken, and subscribed to by them, at the time mentioned, and at the office of Caswell and Starr, in Cincinnati. And I do further certify, the said depositions were written by them in my presence, except such parts of them as were written in my own hand writing, the counsel of both parties being present. I do further certify, that I am not of counsel for either party in said cause, or of kin to either of the parties, nor am I interested in the event of the suit in any manner whatever. In testimony whereof, I have hereunto subscribed my name, and affix my private seal, this 25th day of December, 1829.

ENOS WOODRUFF, *A. J. H. County.* [SEAL.]

Which testimony, the said defendants thereupon contended, was not sufficient to shew that said original deed was legally executed; this objection the said court also overruled, and the defendants thereupon except to said opinion, and pray that it may be sealed.

The plaintiff then offered in evidence the deed marked C, date June 12, 1804, from John Dailey to William Liman, for the lot aforesaid, which deed is in the words and figures following, to wit:

This indenture, made the twelfth day of June, in the year one thousand eight hundred and four, between John Dailey, of Cincinnati, in the county of Hamilton, and State of Ohio, of the first part, and William Lemmon, of the township of Miami, in the county and State aforesaid, of the second part, witnesseth, that the said John Dailey, for and in consideration of the sum of two hundred dollars, to him in hand well and truly paid, at or before the ensealing and delivery hereof, by the said William Lemmon, the receipt

whereof the said John Dailey doth hereby acknowledge, and thereof and therefrom doth clearly acquit, exonerate, and discharge the said William Lemmon, his executors and administrators, have remissed, released, and for ever quit claimed, and by these presents the said John Dailey, for himself and his heirs, doth remise, release, set over, transfer, assign, and hereby absolutely quit claim unto the said William Lemmon, and to his heirs and assigns for ever, all that certain small piece of land, being the north half of lot number four hundred and sixty-six, bounded on the north by Front street, lying in front of lot number seventy-six, being four perches and twenty-two and a half links wide, situate and being in the town of Cincinnati aforesaid, Hamilton county, and State of Ohio, being a part of the seventeenth fractional section in the fourth township and first fractional range in the Miami purchase, which part of a lot contains twenty-nine square perches of land and some small fraction more, being six perches long on Front street; together with all and singular the privileges and appurtenances, to the same north half lot and parcel of land belonging, or in any way thereto appertaining. To have and to hold and singular the above described piece of land and premises, with all its privileges and appurtenances thereunto belonging, to the said William Lemmon, to the only proper use, benefit, and behoof of the said William Lemmon, and of his heirs and assigns for ever. And the said John Dailey, for himself, his heirs, executors, and administrators, doth covenant with the said William Lemmon, and with his heirs and assigns, that he, the said John Dailey, hath not directly nor indirectly granted, sold, conveyed, or given away the said small piece of land, nor hath he in any manner encumbered, weakened, embarrassed, endangered, or subjected the same to eviction by any mortgage, jointure, judgment, statute, or other lien thereon, thereby invading, abandoning, or forfeiting his right and title to the same piece of land; but on the contrary, that his, the said John Dailey's, right, claim, and title thereto is, at the time of the ensealing and delivery hereof, as full, free, clear, valid, good, and absolute in the premises and lands aforesaid, as when he first received his deed from Joel Williams, bearing date on the sixteenth day of April, in the year eighteen hundred, which deed is herewith delivered over to the said William Lemmon as evidence of his valid title and right to the said parcel of land; and the warrantee in fee simple thereto, under the absolute covenants and guarantee therein contained of the said Joel Williams, which shall henceforth and for ever hereafter attach to the said William Lemmon, and to his heirs and assigns for ever. And the said John Dailey doth, for himself and his heirs, further covenant with the said William Lemmon, and his heirs and assigns, that all and singular the premises and half lot of land aforesaid, with the privileges and appurtenances thereto belonging, unto the said William Lemmon, and to his heirs and assigns, against him, the said John Dailey, and against his heirs, executors, and administrators, and against all and every other person or persons claiming the same in any manner whatsoever, by, from, or under the said John Dailey, will warrant and for ever defend.

In testimony whereof, the said John Dailey, together with Elizabeth his wife, have hereunto set their hands, and affixed their seals, severally; the said Elizabeth relinquishing, releasing, and for ever renouncing her right of dower or thirds in or to the premises and parcel of land aforesaid.

J. DAILEY, [SEAL.]
E. DAILEY. [SEAL.]

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Signed, sealed, and delivered, the day first above written, in the presence of

WILLIAM SYMMES, JAMES GARDNER.

STATE OF OHIO, HAMILTON COUNTY, ss.

Before me, James Ewing, one of the justices of the peace in and the county aforesaid, came personally John Dailey and his wife Elizabeth, the within grantors, and acknowledged the within indenture to be their voluntary act, and for the use and purposes therein contained. In testimony whereof, I have hereunto set my hand, and affixed my seal, this eleventh day of June, Anno Domini 1804.

JAMES EWING. [SEAL.]

Received the 14th and recorded the 14th June, 1804, in book E, No. 2, page 695.

JOHN W. BROWNE, *Recorder H. County.*

And a deed marked D, dated 31st August, 1811, from William Lemmon to Jacob White, for the same lot, which deed is in the words and figures following, to wit:

This indenture, made the thirty-first day of August, in the year of our Lord one thousand eight hundred and eleven, between William Lemmon, of the county of Hamilton, and State of Ohio, of the first part, and Jacob White, of the said county and State, of the second part, witnesseth, that the said William Lemmon, for and in consideration of the sum of six hundred dollars, to him in hand well and truly paid, at or before the ensealing and delivery hereof, by the said Jacob White, the receipt whereof the said William Lemmon doth hereby acknowledge, and thereof and therefrom doth clearly acquit, exonerate, and discharge the said Jacob White, his executors and administrators, have remised, released, and for ever quit claimed, and by these presents the said William Lemmon, for himself and his heirs, doth remise, release, set over, transfer, assign, and hereby absolutely quit claim, unto the said Jacob White, and to his heirs and assigns for ever, all that certain small piece of land, being the north half of lot number four hundred and sixty-six, bounded on the north by Front street, lying in front of lot number seventy-six, being four perches twenty-two and a half links wide, situate and being in the town of Cincinnati aforesaid, Hamilton county, and State of Ohio, being a part of the seventeenth fractional section in the fourth township and first fractional range in the Miami purchase, which part of a lot contains twenty-nine square perches of land and some small fraction more, being six perches long on Front street; together with all and singular the privileges and appurtenances, to the same north half lot and parcel of land belonging, or in any way thereunto appertaining. To have and to hold all and singular the above described land and premises, with all its privileges and appurtenances thereunto belonging, to the said Jacob White, and of his heirs and assigns for ever. And the said William Lemmon, for himself, his heirs, executors, and administrators, doth covenant with the said Jacob White, and his heirs and assigns, that he, the said William Lemmon, hath not directly nor indirectly granted, sold, conveyed, or given away the said small piece of land, nor hath he, in any manner, encumbered, weakened, embarrassed, endangered, or subjected the same to eviction by any mortgage, jointure, judgment, statute, or other lien thereon, thereby invading, abandoning, or

forfeiting his right and title to the same piece of land; but on the contrary, that his, the said William Lemmon's, right, claim, and title thereto is, at the time of the ensealing and delivery hereof, as full, free, clear, valid, good, and absolute in the premises and lands aforesaid, as when he first received his deed from John Dailey, bearing date on the sixteenth day of April, in the year eighteen hundred; which deed is herewith delivered over to the said Jacob White as evidence of his valid title and right to the said parcel of land, and the warrantee in fee simple thereto, under the absolute covenant and guarantee therein contained of the said John Dailey, which shall henceforth and for ever hereafter attach to the said Jacob White and to his heirs and assigns for ever. And the said William Lemmon, for himself and his heirs, further covenant with the said Jacob White, and his heirs and assigns, that all and singular the premises and half lot of land aforesaid, with the privileges and appurtenances thereto belonging, unto the said William Lemmon, and to his heirs and assigns, against him, the said William Lemmon, and against his heirs, executors, and administrators, and against all and every other person claiming the same in any manner whatever, by, from, or under the said William Lemmon, will warrant and for ever by these presents defend.

In testimony whereof, the said William Lemmon hath hereunto set his hand and seal, together with Mary his wife, who hereby relinquishes her right of dower in the premises. In testimony whereof, we have hereunto set our hands and seals, at Cincinnati, the day and year first above written.

WILLIAM LEMOND, [SEAL.]

her

MARY × LEMOND. [SEAL.]

mark.

In presence of

DANIEL D. BETTOY,

GRIFFIN YEATMAN.

STATE OF OHIO, HAMILTON COUNTY, set.

Personally came before me, Griffin Yeatman, a justice of the peace in and for the county of Hamilton, William Lemm, together with Mary his wife, the within grantors; and the said Mary hereby relinquishing her right of dower in the premises according to law, they acknowledged the same as their free and voluntary act and deed for the uses and purposes therein contained. In testimony whereof, I have hereunto set my hand and seal. at Cincinnati, the thirty-first day of August, eighteen hundred and eleven.

GRIFFIN YEATMAN, *J. P.* [SEAL.]

Received August 31, recorded 7th September, 1811, in book I, No. 1, page 448.

JOSEPH CARPENTER, *Recorder Hamilton County, O.*

To the introduction of both which said deeds the said defendants objected, until the said plaintiff should introduce the map or plat of said town of Cincinnati, on which said lots in said deeds referred to were located; which objection the court also overruled, and permitted parol evidence of the location of said lots to be given by said plaintiff; to which opinion the said *plaintiff* except, and pray this their bill to be sealed.

The defendant also objected to the deed from William Lemmon to Jacob White, because it was not legally attested and proved by the witnesses

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thereto, as required by the statute of the State of Ohio, relating to the proof and acknowledgement of deeds, passed on the day of , Anno Domini 1805, and which was in force when said deed purports to be executed; which objection the court also overruled; to which opinion the defendants also except, and request this their bill to be sealed.

The plaintiffs then offered in evidence the deed marked G, dated 28th October, 1824, from Jacob White to Edward White, the lessor of the plaintiff, which deed is in the words and figures following, to wit:

Know all men by these presents, that I, Jacob White, of the county of Boone, in the State of Kentucky, for and in consideration of nine thousand dollars, lawful money of the United States, to me in hand paid by Edward White, of Ralls county, in the State of Missouri, the receipt whereof I do hereby acknowledge, have bargained, sold, and quit claimed, and by these presents do bargain, sell, and quit claim, to the said Edward White, his heirs and assigns for ever, all the right, title, interest, estate, claim, and demand, both in law and in equity, and as well in possession as in expectancy, which I, the said Jacob White, have to the following described lot or parcel of land, lying, being, and situate in the city of Cincinnati, in the county of Hamilton, and State of Ohio, it being the north half of lot known on the plan of the said city of Cincinnati by number four hundred and sixty-six, bounded on the north by Front street and lying in front of lot number 76 in said city, being four perches and twenty-two and a half links wide, being a part of the seventeenth section in the fourth township and first fractional range, which lot contains twenty-nine perches and upwards, being six perches long on Front street, and being the same lot of ground conveyed to me by the said Jacob White by William Lemmon, by deed dated the 31st day of August, 1811, conveyed to said Lemmon by John Dailey, by deed dated the 12th day of June, 1804, conveyed to said Dailey by Joel Williams, by deed dated the 16th day of April, 1800, and being part of the fraction conveyed to said Williams by John Cleves Symmes, by deed dated the 14th day of February, 1800.

To have and to hold the above bargained and quit claimed premises, to him, the said Edward White, his heirs and assigns for ever, together with all and singular the rights, privileges, and appurtenances thereto belonging.

In testimony whereof, I, the said Jacob White, have hereunto set my hand and seal, this 28th day of October, one thousand eight hundred and twenty-four.

JACOB WHITE. [SEAL.]

Signed, sealed, and acknowledged in presence of
NATHAN GUILFORD,
DAN. STONE, Jr.

THE STATE OF OHIO, HAMILTON COUNTY, set.

Before me, E. Hotchkiss, a justice of the peace within and for said county, personally appeared Jacob White, the above named grantor, and acknowledged the above deed of conveyance to be his voluntary act and deed, for the uses and purposes therein mentioned. In testimony whereof, I have hereunto set my hand and seal, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and twenty-four.

E. HOTCHKISS, *Just. Peace.* [SEAL.]

Rec'd 2d November, 1824, and recorded in book No. 22.
GRIFFIN YEATMAN, *Recorder of Ham. Co. Ohio.*

And having proved that the defendants were in possession of the property in dispute, rested his cause.

The defendants thereupon offered in evidence the depositions of Matthias Denman, Israel Ludlowe, Robert Patton, John R. Mills, William McMillan, Ephraim Kibby, Daniel C. Cooper, James Silver, Jacob Burnet, John Reiley, Matthew Minton, John Riddle, James Riddle, Griffin Yeatman, John Mahard, Ethan Stone, and Samuel Still, marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, as follows, to wit:

United States circuit court, 7th circuit, district of Ohio.

THE CITY OF CINCINNATI, tenants, &c. *ads.*
JOHN DOE, ex. dem. EDWARD WHITE. } *Ejectment.*

The defendants will proceed to take the depositions of Matthias Denman and others, at the residence of said Denman, in the town of Springfield, in the county of and State of New Jersey, before some magistrate legally authorised to take depositions, on the second Monday of October next ensuing, between the hours of 9 A. M. and 5 P. M., to be continued from day to day until the same are finished; the said depositions, when taken, to be read in evidence for the defendants on the trial of the above cause.

September 1, 1829. BELAMY STORER,
Att'y to defendants.

We consent that the above deposition, when taken, shall be read in two actions of ejectment now pending against the said defendants, in favor of said plaintiff, in the court aforesaid.

Sept. 1, 1829.

BENHAM & FINLEY, *att'y for plff.*

STATE OF NEW JERSEY, ESSEX COUNTY, ss.

The deposition of Matthias Denman, taken before me, the undersigned, one of the judges of the inferior court of common pleas in and for the county of Essex, and State of New Jersey, duly commissioned and sworn, and acting as such, and taken on this twelfth day of October, (being the second Monday of said month,) in the year of our Lord 1829, at the residence of the said Matthias Denman, in the town of Springfield, in the county and State aforesaid, to be read in evidence in a certain suit depending in the circuit court of the United States, in and for the seventh circuit, and district of Ohio, holden at Columbus, wherein John Doe, ex. dem. Edward White, is plaintiff, and the city of Cincinnati is defendant; the said deponent being of lawful age, first duly sworn and cautioned to depose the whole truth, on his oath deposeth and saith, that he resides in the said county of Essex, and more than one hundred miles from Columbus aforesaid; furthermore he saith, that he was one of the original proprietors of the town of Cincinnati, and contracted with, and purchased of, John C. Symmes the land whereon the town of Cincinnati is situated, which was a section and fraction; that the purchase was made by this deponent of the said John C. Symmes, in the year one thousand seven hundred and eighty-eight, to the best of this de-

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ponent's belief and recollection; that this deponent, before the laying out of the town of Cincinnati, sold one-third of the town tract to Israel Ludlowe, now deceased, and one other third to Robert Patterson; that Israel Ludlow was appointed by this deponent as agent, as far as this deponent was interested, to lay out the town of Cincinnati, and that he acted as the agent of this deponent and Robert Patterson, and as proprietor himself, in laying out the said town; and that the town was laid out in the year of our Lord one thousand seven hundred and eighty-nine; and as this deponent thinks Robert Patterson assisted Ludlowe in laying out the town, and was on the ground when the town was laid out, the place and proceedings relating to the same, were, by said Israel Ludlowe and Robert Patterson, submitted to this deponent, and after consideration, were by him approved of, sanctioned, and confirmed; that the ground lying between Front street and the Ohio river, and extending from Main street to the artificer's yard, was set apart as a common for the use of the town, and given as such for the benefit of the town forever, reserving only the right of a ferry, and consequently no lots were laid out on said tract; that some years after the laying out of the town, this deponent sold his interest in his third to Joel Williams; that the said Joel Williams was, by the purchase, to stand in this deponent's stead, acquiring the rights of this deponent only, and subject to all privileges, benefits, or interests in the town; and that the said Joel Williams knew, at the time of the purchase, that Israel Ludlowe and Robert Patterson were proprietors with this deponent, each of a third part of the lands before mentioned, and as this deponent thinks, was informed, or at any rate must have known, that the before mentioned part of the said land had been given for the benefit of the town as a common forever, long before he purchased of this deponent, as he was one of the first settlers in the town; that this deponent, and his then copartners, Israel Ludlow and Robert Patterson, were induced to give the said land for a common, not only for the convenience of the inhabitants of the town, but upon a supposition that it would enable them to sell lots advantageously, and this deponent believes it had that effect; and this deponent further saith, that he did not inform the said Joel Williams, at the time he sold him his one-third of the land, nor at any time before or since, that there was any balance on the town tract due to John C. Symmes, and that the said John C. Symmes, since the original purchase from him of the said section and fraction where the said town of Cincinnati is built, never pretended to this deponent there was any such balance, although this deponent has often seen him, and dealt considerably with him since that time. This deponent further saith, that five hundred and fifty dollars was the consideration money for the right and interest of this deponent to the one-third of the town tract sold as aforesaid to the said Joel Williams, and for that only the said Joel Williams, and for that only the said Israel Ludlow, Robert Patterson, and this deponent, were sole proprietors of the said section and fraction aforesaid, until this deponent conveyed his right and title to his one-third to the said Joel Williams; and this deponent further saith, that the said Joel Williams went to Cincinnati in company with this deponent, in the fall of seventeen hundred and eighty-eight, and lived there from that time until his death; that the said Joel Williams, long before he purchased the one-third part of the town as aforesaid, became the owner of a lot laid out and marked upon the original plat made by this deponent, Ludlow and Patterson, which said plat exhibited the ground above described as a common; that the survey of the town, according to the plat aforesaid,

was made while the said Joel Williams was in Cincinnati, of which survey he must have known; that at the time this deponent sold to Williams, he gave him the original plat of the town, exhibiting as a common the tract lying west of Broadway, east of Main street, and between Front street and the river; that this deponent believes the purchasers of lots bounding on the streets contiguous to the common were publicly informed by the proprietors, or their agent, that the land above described was to remain forever as a common for the benefit of the citizens of Cincinnati; and this deponent believes, to the best of his recollection, he so informed Joel Williams at the time he sold him the third of said town; that the tract above described was intended for and publicly declared to be a common by the original proprietors, not only when the town was laid out, but when the lots were located and surveyed, and also when they were sold; that the greater number of lots on the streets contiguous to said common had been sold by said original plat, and improved before the sale by this deponent to the said Williams. This deponent believes that Judge Symmes knew that said tract, above described, were reserved as a common at the time of the location and survey of the said town by said Ludlow, Patterson, and this deponent; that said town was laid out originally, and surveyed both on the section and fraction; and further saith not.

MATTHIAS DENMAN.

I, William Stites, one of the judges of the inferior court of common pleas in and for the county of Essex, and State of New Jersey, duly commissioned and sworn, and acting as such, do certify that, at the request of the city of Cincinnati, defendants in said suit, I caused the deponent in the foregoing deposition to come before me, at the time and place stated in the caption, because said witness resides more than one hundred miles from Columbus, the place of holding said court of the United States, and that I did not cause any notification to be given to the adverse party of the time and place, so as to be present at the taking of the same, because said adverse party did not reside within one hundred miles of the place of taking the deposition, and had no known agent or attorney within that distance of said caption. The said witness was by me carefully examined, cautioned, and sworn then and there to tell and testify the whole truth; the said deposition was wholly reduced to writing by me, in presence of the witness, and then and there by him subscribed in my presence; that I am not counsel or attorney for either party, or in any way interested in the event of the said suit; all which I do certify as the cause and manner wherefore and how said deposition was taken.

WILLIAM STITES.

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of Israel Ludlow, Esq., of Cincinnati, taken at Cincinnati, the 27th day of December, 1803, before Michael Jones and Luke Foster, judges of the court of common pleas in and for said county, for the purpose of perpetuating the testimony of the said Israel Ludlow, respecting a tract of land in the said town of Cincinnati, commonly called the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river, which said tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who has been duly notified of the time and place of taking this

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deposition. The said Israel Ludlow being duly sworn, as the law directs, doth depose and say, that, in the fall of 1788, he, the deponent, became, by purchase from Matthias Denman, a proprietor in the proportion of one-third of the section and fraction on which the town of Cincinnati is laid out; that, in the month of January, 1789, this deponent, together with Robert Patterson, Esq., of Kentucky, who was also a proprietor in the proportion of one-third of said section and fraction, landed on said ground, with a number of others, to lay out the town of Cincinnati, and form a settlement thereon; that this deponent was then the agent of said Matthew Denman; that he, as such, and acting for himself, together with Robert Patterson, Esq., did, for the encouragement of the settlement, agree to make a donation to the first thirty settlers, one town lot and one out lot to each settler, in said town of Cincinnati; that this deponent and said Robert Patterson agreed on the plan of said town, and surveyed such part of it at was necessary to accommodate the first thirty settlers; that they extended the front of the town as far down as Main street; that it was publicly declared to the said first thirty settlers that the ground in front of Front street should be and remain a common for the use of the said town; that the lots thus laid out on said Front street were called front lots, and given as such to said settlers; and that this deponent never intended to lay out or appropriate any part of said common for houses or any other uses, but for the general use and good of the town as low down as said Main street. And this deponent further saith, that the tract of land, bounded on the east by the eastern boundary of said fractional section on which a part of said town is laid out, north by Front street, west by Main street, and south by the Ohio river, was set apart and given by the proprietors of said town as a common forever, for the use and benefit of the citizens of said town, reserving to the proprietors the right of a ferry on the Ohio, in said common.

ISRAEL LUDLOW.

Sworn and subscribed before us, the day and year aforesaid.

MICHAEL JONES,
LUKE FOSTER.

Received in the office, the 27th December, 1803, and recorded in book D, No. 1, page 77. State of Ohio, Ham. Co.

GRIFFIN YEATMAN, *D. Recorder.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, the deposition of Robert Patterson, a citizen of the State of Kentucky, taken at Cincinnati, in the county of Hamilton, on the 27th day of December, A. D. 1803, before Michael Jones and Luke Foster, Esqrs., two of the associate judges of the court of common pleas in and for the county of Hamilton, for the purpose of perpetuating the testimony of the said Robert Patterson, respecting a tract of land in the said town of Cincinnati, commonly denominated the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river, which tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who hath been duly notified of the time and place of taking this deposition, who, being sworn according to law, deposeth and saith, that, in the year seventeen hundred and eighty-eight, he, the deponent, purchased of Matthias Denman one equal undivided third

part of the section and fraction on which the town of Cincinnati is laid out; that, in the month of January, seventeen hundred and eighty-nine, he, the deponent, together with Israel Ludlow, who was also a proprietor in the proportion of one-third of said land, and agent of the said Matthias Denman, landed on the ground for the purpose of laying off the town of Cincinnati, and proceeded to lay off the said town, as the same hath since been recorded by the said Israel Ludlow on the records of Hamilton county, and for the accommodation of the first thirty settlers, to whom was promised a town and out lot each, they laid out the front of said town as far down or westwardly as Main street, and assigned by draft to each settler his particular lot or donation; and that the ground in front of Front street was declared at that time a public common, for the use of the said citizens of the said town, excepting and reserving only, for the benefit of the proprietors, the privilege of establishing a ferry on the bank of the Ohio on said common, which common embraces all the ground bounded east by the east boundary of the said fractional section, on which part of said town is situate, north by Front street, west by Main street, and south by the Ohio river. And this deponent further saith, that, in consequence of the above tract of land being given as a public common, he considered the lots in the said town as more valuable than they otherwise would have been, and believes that they were considered so by the settlers; and that the said lots, in consequence of that donation, sold for a higher price, and that the purchasers received an advantage from said common sufficient to indemnify them for the advance price paid by them for the respective lots.

Question by Jacob Burnet, Esq. Who were the original proprietors of the town of Cincinnati?

Answer. An agreement was made between Matthias Denman, John Filson, and myself, to lay out a town on the ground where Cincinnati now stands; in about one month after this agreement was made, and before any steps had been taken for laying out the said town, the said Filson was killed. After the death of the said Filson, Matthias Denman, with the approbation of myself, took in Israel Ludlow as a partner, in the place of the said John Filson, who had made no payment towards the land, and the said Matthias Denman, Israel Ludlow, and myself, are the original proprietors, and proceeded to lay off the said town after the death of said Filson. I was acquainted with the brother of the said Filson, who was heir at law to the said Filson, and he informed me that, as the said John Filson had paid nothing for the said land, he did not set up any claim to the said town, or consider himself as having any interest or concern therein.

Question by Jacob Burnet, Esq. Was Joel Williams one of the original proprietors of the town?

Answer. J. Williams was not one of the original proprietors.

Question by Mr. Burnet. Was it understood by you and Samuel Freeman at the time he purchased from you, that the land above described, between Front street and the Ohio river, had been given as a public common for the use of the town?

Answer. I understood it, and I believe Freeman did also; that he was to pay me eight dollars per acre for it, as the value of the unsold lots were enhanced in consequence of the donation.

Question by Mr. Burnet. Have examined both the plans on record, the one recorded by Joel Williams, the other by Israel Ludlow; and which of them is the original plan?

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Answer. I have examined both, and believe the one recorded by Israel Ludlow to be agreeable to the original plan.

Question by Mr. Burnet. Whether Samuel Freeman has not refused to pay you for the above described land, set apart as a common, since the contract with him, the said Samuel?

Answer. He has refused to pay me, although requested; but I did agree to give up any claim for the common if he would pay me the residue agreeable to contract.

R. PATTERSON.

Sworn and subscribed before us, the day and year aforesaid.

MICHAEL JONES,
LUKE FOSTER.

Received in the office, the 27th December, 1803, and recorded in book D, No. 1, pages 73, '4, and '5. State of Ohio, Hamilton county.

GRIFFIN YEATMAN, *D. Recorder.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of John R. Mills, Esq., of Springfield, in the county aforesaid, taken at Cincinnati, the 27th day of December, 1803, before Michael Jones and Luke Foster, judges of the court of common pleas in and for said county, for the purpose of perpetuating the testimony of the said John R. Mills, respecting a tract of land in the said town of Cincinnati, commonly called the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river, which said tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who has been duly notified of the time and place of taking this deposition. The said John R. Mills, being duly sworn, as the law directs, doth depose and say, that, in the spring, after the town of Cincinnati was settled, he arrived at the said town, and that some short time after his arrival, he saw Col. Robert Patterson, one of the proprietors of the said town, and stated to him a claim that he had for a lot in the said town; the said Robert Patterson there informed this deponent that the donation lots were all taken up; this deponent then proposed to take a lot between Front street and the river Ohio, upon which the said Robert Patterson told the deponent that he could not have a lot on that ground, as it had been given by the proprietors as a common for the use and benefit of the citizens of the town. And this deponent further saith, that he hath heard Israel Ludlow and Matthias Denman, who were original proprietors of the said town, acknowledge and assert that the land between Front street and the Ohio river, and extending as far southwest as the Main street, had been set apart by the proprietors, and given as a common for the use of the town; and this deponent hath always understood and considered the said land as a public common.

JOHN R. MILLS.

Sworn and subscribed before us, the day and year aforesaid.

MICHAEL JONES,
LUKE FOSTER.

Received in the office, the 27th December, 1803, and recorded in book D, No. 1, page 76. State of Ohio, Hamilton county.

GRIFFIN YEATMAN, *D. Recorder.*

STATE OF OHIO, HAMILTON COUNTY, set.

Be it remembered, that, on the seventh day of October, in the year of our Lord one thousand eight hundred and three, before us, Michael Jones and Luke Foster, Esqrs., two of the associate judges of the court of common pleas within and for the first circuit, came personally William McMillin, of Cincinnati, who, on oath administered according to law, deposeth and saith, that he, the deponent, was one of those who formed the settlement of Cincinnati, on the twenty-eighth day of December, in the year of our Lord one thousand seven hundred and eighty eight; that a few days afterwards a plan of the town of Cincinnati was draughted by Israel Ludlow, with the advice and assent of Robert Patterson, both of whom were then considered as joint proprietors with Matthias Denman, of New Jersey, and the said Israel Ludlow then acted as agent for the said Denman; agreeably to the aforesaid plan, the town was laid off, and then in part surveyed, excepting that part which lies south of Front street and west of Main street, which was not laid until some time afterwards; and agreeably to the aforesaid plat and survey was the town lots built upon and improved, without any alteration from that time since, to this deponent's knowledge; that at the time of submitting the aforesaid plan to the people who come to form the settlement, which was early in January, one thousand seven hundred and eighty-nine, the aforesaid Robert Patterson and Israel Ludlow did declare that all the ground lying between the front of the lots, which lie between Vatier's and Gibson's corner, that is to say, all south of the two upper squares on Front street, should be a perpetual common for the use of the inhabitants of said town, provided, however, that no commoner, in virtue of his right of common, should be entitled to a right of keeping a ferry on the Ohio, and oftentimes afterwards he, this deponent, heard the said Ludlow and Patterson declare the same to be a common, which the proprietors had no right to sell or exclusively to occupy; that as late, probably, as the year one thousand seven hundred and ninety-three, the aforesaid Robert Patterson and this deponent, being in conversation on this subject of common, the said Patterson requested this deponent to prepare a deed of covenent for the further assuring of the aforesaid common for him, the said Robert, to execute. This deponent proceeded to draw such instrument, and presented it to the said Robert, who then remarked that, as the aforesaid Ludlow was absent, it might be considered indelicate in him to sign alone, but as Mr. Ludlow was expected to return in a few weeks or months, or about a certain time then mentioned, the said Patterson would then defer executing it until the time of his next coming over, when he would immediately after he heard of Mr. Ludlow's return. Before Mr. Ludlow's return, as well as this deponent can recollect, the said Robert Patterson was reported to have sold his right of property in the said town of Cincinnati to one Samuel Freeman; and the deed of covenant hath not been executed to this deponent's knowledge. And further this deponent saith, that, some time in the year 1792, Joel Williams, of Cincinnati, and this deponent were conversing on the subject of the aforesaid common, and query were made whether, as the proprietors had not bound themselves by some instrument of writing to secure the aforesaid common to the inhabitants of the town, they might be tempted to evade their verbal promise and yet sell it; upon which conversation the said Joel Williams, who seemed to be interested in supporting the common in behalf of the inhabitants, en-

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joined it on this deponent to keep in mind the declaration of the proprietors on that subject.

WILLIAM McMILLAN.

Sworn to and subscribed before us, the day and year aforesaid.

MICHAEL JONES,
LUKE FOSTER.

STATE OF OHIO, HAMILTON COUNTY, ss.

Personally appeared before us, Francis Dunlavy, Esq., president judge, and James Silver, Esq., associate judge, in and for the county of Hamilton aforesaid, Luke Foster, and being duly sworn, deposeth and saith, that, at the time of drawing the within deposition by Mr. William McMillan, at the house then occupied by Judge Jones, Mr. Joel Williams was present, and urged by both Judge Jones and myself to continue until the deposition should be taken and subscribed, but said Joel refused, and withdrawing, replied that he, the said Joel, was notified to appear at another place, on another day, and would attend strictly to the notification, but would not stay to hear Mr. McMillan sworn to this within deposition, or hear the same read; and further this deponent saith not. But being interrogated by Arthur St. Clair, Esq, whether or not the said Joel Williams asked several questions of the deponent, Mr. McMillan, relative to the cause to which the deposition alludes, the deponeth replieth, and further saith, that very considerable coversation on the subject passed between the said Mr. Williams and the said McMillan took place at that time, but that the memory of the deponent will not permit to particularize.

LUKE FOSTER.

Sworn and subscribed, the 7th day of May, A. D. 1814.

FRANCIS DUNLAVY,
JAMES SILVER.

Received 6th, and recorded the 13th July, 1804, in book D, No. 1, page 104 and 105.

JOHN W. BROWN, *Recorder Hamilton co.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of Ephraim Kibby, of Warren county, taken at Cincinnati, the 3d day of May, 1804, before James Silver and Luke Foster, judges of the court of common pleas in and for said county, for the purpose of perpetuating the testimony of the said Ephraim Kibby, respecting a certain tract of land in the said town of Cincinnati, commonly called the common, bounded by the eastern boundary of said town, by Front street, by Main street, and by the Ohio river, deposeth and saith, that, some time in the year 1789, Israel Ludlow and Robert Patterson, Esq., with many others, met at what is now called Cincinnati, for the purpose of settling said town; they were thought the proprietors of said town, together with Matthias Denman; observing a fraction in front as aforesaid, I asked what was to be done with it; the said Israel Ludlow and Robert Patterson said it should be for public use, and that it should never be put for any other use than what the citizens or people pleased.

Question 1st. Did you ever hear Matthias Denman acknowledge that the land lying between Front street and the Ohio river, and extending from

Main street to Charles Vatier's corner, was given by the proprietors of the town as a common for the benefit of the owners thereof?

Answer. I did; first in the State of New Jersey, in the year 1790, and afterwards in the town of Cincinnati.

Question by Joel Williams. 1st. Did you not understand from the original proprietors of the town of Cincinnati, or some of them, that one section only had been located by Matthias Denman, of New Jersey, in the Miami purchase, nearly opposite the mouth of Licking river?

Answer. I know of Mr. Denman located several sections in the Miami purchase, one of which was as nearly opposite the mouth of Licking as could be.

2d. Do you know when the fraction of land, appertaining to the town section south of the same, and adjoining the river Ohio, was located, or what part or proportion thereof?

Answer. I do not.

3d. Do you know whether all the proprietors of the town of Cincinnati agreed to give any land as a common, and if any, how much at or after the purchase or location of the said town fraction?

Answer I heard Messrs. Denman, Ludlow, and Patterson say that all the ground between Front street, Main street, and the Ohio, and the eastern boundary of the town now called Cincinnati, but then called Losantiville, was a common for the use of the public, and that a number of lots, I believe eight, was given for court-house and jail; but, until this day, I never knew the town, of what is called Cincinnati, was on a small or large fraction; and it was understood that the location made by Mr. Denman would extend to the Ohio. And further this deponent saith not.

EPHRAIM KIBBY.

Sworn and subscribed, the third day of May, A. D. 1804.

JAMES SILVER,
LUKE FOSTER.

Recorded 5th May, 1804, in book D, No. 1, pages 94 and 95.

JOHN BROWN, *Recorder H. C.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of Daniel C. Cooper, of the county of Montgomery, in the State aforesaid, taken at Cincinnati, the 27th day of December, 1803, before Michael Jones and Luke Foster, two of the associate judges of the court of common pleas in and for said county, for the purpose of perpetuating the testimony of the said Daniel C. Cooper, respecting a tract of land in the town of Cincinnati, commonly called the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river, which said tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who has been duly notified of the time and place of taking this deposition, the said Daniel C. Cooper, being duly sworn, as the law directs, doth depose and say, that, some time in the spring, in the year 1791, this deponent came to Cincinnati in company with Israel Ludlow, one of the proprietors of the said town, who informed this deponent that if he would survey off lots when the settlers in the town called on him, that he might make choice of any vacant lot in the town for his services; that this deponent examined the lots, and requested the said Israel Ludlow to permit this deponent to lay one off in front of the

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lots where Col. Gibson formerly resided; that the said Israel Ludlow informed this deponent that he could not do that, as that ground was a common for the use of the town.

D. C. COOPER.

Sworn and subscribed before us, the day and year aforesaid.

MICHAEL JONES,
LUKE FOSTER.

Received in the office, the 27th December, 1803, and recorded in book D, No. 1, page 75 and '6. State of Ohio, Hamilton County.

GRIFFIN YEATMAN, *D. Recorder.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of James Silver, of the State and county aforesaid, at Cincinnati, in the said county, on the third day of May, A. D. 1804, before Francis Dunlavy, Esq., the presiding judge of the court of common pleas for the county aforesaid, and Luke Foster, one of the associate judges for the county aforesaid, for the purpose of perpetuating the testimony of the said James Silver, respecting a tract of land in the said town of Cincinnati, commonly denominated the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and the Ohio river; which tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who hath been duly notified of the time and place of taking this deposition, who, being sworn according to law, deposeth and saith, that, in the year one thousand seven hundred and ninety-five, as near as this deponent can recollect, he heard Israel Ludlow, Esq., of the county aforesaid, say he was a joint partner and holder of the land whereon the town of Cincinnati stands, in said county, and was also agent for the other proprietors to sell the said land in lots, and give a certain fraction of land lying between Front street, in said town, and the river Ohio, in front of the lots owned by William McMillan, Esq., and Mr. Henry Reed, and that he, the said Ludlow, did give the said fraction of land for a public common to the inhabitants of said town.

Question by Joel Williams. 1st. Who was the original proprietors of the town of Cincinnati?

Answer. I do not know.

2d. At what time was the town fraction located, and what quantity of acres?

Answer. I know not.

3d. Do you know whether Israel Ludlow was a proprietor, and in what manner he became such?

Answer. I do not know in what manner, but he was reputed as such.

4th. Of what extent was the fraction of land along the Ohio, between Front street and the said river, opposite the lots of the said William McMillan and Henry Reed, which Israel Ludlow should have said was to be given as a common for the use of said town?

Answer. I understood by Israel Ludlow, the fraction extending from the southeast corner of said Ludlow's lot adjoining, and the lot whereon Joel Williams' dwelling house was built, to the southwest corner of the artificer's yard, across the street from the dwelling house of Charles Vatier, on Front street.

5th. Do you know by what authority Mr. Ludlow proposed to make the above donation of a common?

Answer. I do not. And further this deponent saith not.

JAMES SILVER.

Sworn and subscribed, the third day of May, A. D. 1804.

FRANCIS DUNLAVY, *P. C. C. P.*
LUKE FOSTER.

Recorded 5th May, 1804, in book D, No. 1, page 92.

JOHN W. RROWN, *Recorder H. C.*

United States' circuit court seventh circuit, district of Ohio.

THE PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *vs.* JOHN DOE, ex dem. Edward White.

The defendants notify the plaintiff, or his attorney, that they will take the depositions of Jesse Hunt, James Findlay, and others, before the mayor of the city of Cincinnati, at his office in said city, on Saturday, July 12th, between the hours of 9 A. M. and 5 P. M. of said day, to be read in evidence on the trial of this cause: the deponents living more than one hundred miles from the place of trial.

B. STORER, *for defendants.*

I acknowledge notice of this date. July 7, 1828.

R. S. FINDLEY,
For J. S. Benham.

THE PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *ads.* JOHN DOE, ex dem. Edward White. } *United States' circuit court, 7th circuit, district of Ohio.*

William Ruffin, being duly sworn, deposes and says, that he came to Cincinnati in the spring of the year seventeen hundred and ninety-three, and has resided there ever since to the present time; he became acquainted with John Dailey at an early period, he thinks as early as the year seventeen hundred and ninety-six, at which time said Daily resided in Cincinnati, where deponent thinks he continued to reside until the year eighteen hundred and ten or twelve. Deponent further says, that the land lying south of Front street, between Sycamore and Main streets, was entirely unoccupied from the year seventeen hundred and ninety-nine to the year eighteen hundred and five, except the house and fence erected by Joel Williams on the corner of Front and Main streets, and deponent is not certain that said house and fence were erected as early as the year eighteen hundred and five; and during that period the whole of said space, from Sycamore to Main street, was generally understood to be a part of the public common; and further deponent saith not.

WM. RUFFIN.

Oliver M. Spencer, being duly sworn, deposes and says, that he resided in Cincinnati from the year seventeen hundred and ninety-eight till May, eighteen hundred and one, and during the whole of that period the space of ground south of Front street, between Main and Sycamore, was unoccupied, and generally reputed to be a public common; deponent was acquainted with

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John Dailey, and believes that said Dailey was a resident of Cincinnati during the whole of that period; and further deponent says not.

O. M. SPENCER.

Griffin Yeatman, being duly sworn, deposes and says, that he first came to Cincinnati in the year seventeen hundred and ninety three, where he has resided ever since to the present time. At the time of my arrival in Cincinnati, I understood that the ground south of Front street, between Main and Sycamore streets, was generally reputed to be a part of the public common, and I never heard of any claim being set up to it until about the year eighteen hundred and one, when Israel Ludlow had the plat recorded, at which time I was deputy recorder, and resided nearly the whole of that time on Front street, opposite the common. I was acquainted with John Dailey as early as the year seventeen hundred and ninety-six, at which time he resided in Cincinnati, and continued to reside there at least ten years. The ground above described was unoccupied from the year seventeen hundred and ninety-nine till eighteen hundred and six, except by the house and fence on the corner of Front and Main streets. I was acquainted with William Lemon from the year seventeen hundred and ninety-six until his death; said Lemon resided on the Ohio river, ten or twelve miles below Cincinnati, and was frequently in Cincinnati; he was frequently at my house, and I never heard him say any thing about any claim to any part of said common until he sold to Jacob White, in the year eighteen hundred and twelve; and further deponent says not.

GRIFFIN YEATMAN.

John Mahard, being duly sworn, deposes and says, that he came to Cincinnati in the summer of the year seventeen hundred and ninety-eight, where he has resided ever since until the present time. At the time I came to Cincinnati John Dailey was acting as constable, and continued to act in that capacity for about two years, and resided in Cincinnati for several years after, and I think until the year eighteen hundred and ten or twelve. When I came to Cincinnati the land south of Front street, between Main and Sycamore streets, was lying vacant, and continued, for as much as ten years thereafter, to be entirely unoccupied, except by the house on the corner of Main and Front streets, built by Joel Williams about the year eighteen hundred and six; and further deponent says not.

JOHN MAHARD.

Jacob Burnet, being duly sworn, deposeth and saith, that he came to Cincinnati in the year seventeen hundred and ninety-six, where he has resided ever since. When deponent first came to Cincinnati John Daily resided there and continued to reside there until about the commencement of the late war with Great Britain. Soon after I came to the western country I became acquainted with William Lemon, who resided between Cincinnati and North Bend; said Lemon was frequently in Cincinnati. Deponent thinks that said Lemon continued to reside between Cincinnati and North Bend until the year eighteen hundred and five, and some time after. The land south of Front street, between Main street and Broadway, I was informed, on my arrival in Cincinnati, had been given by the proprietor as a public common; it was generally spoken of as such and was called by that name, and I feel confident that every person in Cincinnati who had arrived

at years of discretion was acquainted with the fact. That part of said common which lies between Sycamore and Main streets was wholly unoccupied until Joel Williams erected a brick house at the corner of Main and Front streets, on that part lying between Sycamore street and Eastern row, now Broadway; there had been a stable erected for the use of the army, which was afterwards presented as a nuisance on the common and abated; and about the same time John Dailey was indicted for digging a cellar on that part between Sycamore street and Main street as a nuisance, and I think Jacob White was on the grand jury that found the bill; and further deponent saith not.

J. BURNET.

THE STATE OF OHIO, CITY OF CINCINNATI, ss.

I, Isaac G. Burnet, mayor of the city of Cincinnati aforesaid, not being attorney or of counsel for either of the parties in the foregoing suit, nor in any interest in the event of the same, do hereby certify, that the foregoing depositions of William Ruffin, Oliver M. Spencer, Griffin Yeatman, John Mahard, and Jacob Burnet, were taken before me at my office in said city, on Saturday, the twelfth day of July, eighteen hundred and twenty-eight, between the hours of nine o'clock A. M. and five o'clock P. M. of said day, at the instance of the defendants, in pursuance of the enclosed notice, to be read in evidence on the trial of the above cause; that said depositions were then and there reduced to writing by me, and also subscribed by said deponents respectively in my presence; and that the said deponents were by me carefully examined and cautioned and sworn to testify the whole truth relating to the matters in controversy in said suit; that the reason of taking said depositions is, that the said deponents reside at Cincinnati aforesaid, more than one hundred miles from Columbus the place of trial.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said city, this twelfth day of July, eighteen hundred and twenty-eight.

ISAAC G. BURNET, *Mayor.* [SEAL.]

The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *ads.* JOHN DOE, ex dem. Edward White.	*Seventh circuit court of the United States, in and for the district of Ohio. Action of ejectment.*

The above plaintiff will take notice, that on the 19th day of October instant, the defendants will attend at the office of John Riley, clerk of the court of common pleas of the county of Butler, in the town of Hamilton, in said county, between the hours of eight o'clock A. M. and one o'clock, P. M. on said day, to take the depositions of said John Riley and others; also at the house of Matthew Winton in said town of Hamilton, on the same 19th day of October instant, between the hours of one o'clock and five o'clock P. M. on said day, to take the deposition of said Matthew Winton, all of which witnesses are sick and aged and infirm, and unable to attend court; said depositions will be taken by some justice of the peace or other person authorized to take depositions.

STORER & FOX, *Att'ys for def'ts.*

15*th October*, A. D. 1829.

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THE PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *ads.* JOHN DOE, ex dem. Edward White. } *Action of ejectment in the 7th circuit court of the United States, in and for the district of Ohio.*

The deposition of Matthew Winton, who, being seventy-seven years of age, and confined to a bed of sickness, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposeth and saith:

Question by defendants' counsel. Will you state at what time you moved to Cincinnati, and how long you lived there? And will you have the goodness to state what you know about the piece of ground lying between Main street and Broadway, and between Front street and the Ohio river, in the city of Cincinnati, it being reputed to be a public common for the benefit of the public?

Answer. I think I came to Cincinnati in the year seventeen hundred and ninety, and remained in Cincinnati until the year seventeen hundred and ninety five or six, at which I removed to my farm about fifteen miles from Cincinnati.

Jacob White, agent for the plaintiff, objects to the last part of the interrogatory relative to common, on the ground that it is a leading question.

In answer to the last part of the interrogatory, deponent says, that he always understood that it was for a common; I understood that it was laid out or left out as a common for the use of the town; I understood this from common fame, and it was thought to be so by us all; I never heard any thing to the contrary until after I left Cincinnati.

Question by same. Will you state where Joel Williams, Israel Ludlow, John C. Symmes, and Samuel Freeman lived while you lived in Cincinnati?

Answer. Joel Williams then lived on the north side of Water street, a short distance below Main street; I cannot recollect whether the others lived in town or not; I believe that Israel Ludlow and John Cleves Symmes were frequently in town during that time of my residence in Cincinnati?

Question by same. Will you state whether the original proprietors ever exhibited any plat of the town of Cincinnati to persons wishing to become purchasers of lots? if so, will you state the contents of it as near as you can, if you ever saw it?

Answer. I don't know any thing about it; I don't know that I ever saw any.

Question by same. Will you please state what you have heard Joel Williams or John C. Symmes say about the above described ground being a common?

Answer. As for Williams, Symmes, I do not now recollect that I ever heard them say any thing about it, though it is probable we had several conversations.

Question by same. Will you state how said ground was occupied while you lived in Cincinnati, whether as a common or otherwise?

Answer. It was always occupied as a common while I lived in town, as well as I can now recollect.

Question by plaintiffs' agent. Do you know that the ground in question was or was not legally given for a common?

Answer. I do not know whether it was or not.

Question by the same. Do you or do you not know that there was some improvement on that ground while you lived in Cincinnati?

Answer. I don't at present recollect whether there was or not. And further this deponent saith not.

M. WINTON.

Sworn to and subscribed before me, this 19th day of October, 1829.

WILLIAM HUNTER, *J. P.*

The deposition of John Riley, of the age of sixty-four, taken at this office, in the town of Hamilton, county of Butler, who being first duly sworn to tell the truth, the whole truth, and nothing but the truth, between the above plaintiff and defendants, deposeth and saith:

Question by defendants' attorney. Will you state about what time you moved to Cincinnati, and how long you lived there, and what you know relating to the ground in Cincinnati lying between Main street and Broadway, and Front street and the Ohio river, being laid out or given for a public common, if you know any thing about it?

Answer. The deponent came to reside in Cincinnati early in the spring of the year one thousand seven hundred and ninety-four; he continued to reside in that place from that period until the summer of one thousand eight hundred and three. The first summer he lived in Cincinnati he lived on Front street, between Sycamore street and the street now called Broadway; the space or tract of land lying between Front street, Main street, the Ohio river, and the place then, or what had a short space of time before that, been occupied as the artificers' yard, was used as a common or public ground; deponent does not know that it was claimed by any one, nor does he recollect to have heard any thing whatever said about it. The space then or before that time then occupied as artificers' yard, lies now east of what is called at this time Broadway.

JOHN RILEY.

Sworn and subscribed before me, this 19th day of October, 1829.

WILLIAM HUNTER, *J. Peace.*

I, William Hunter, a justice of the peace in the county of Butler, State of Ohio, hereby certify, that the foregoing depositions of Matthew Winton and John Riley were taken before me, on Monday, the 19th day of October, in the year eighteen hundred and twenty-nine, in the town of Hamilton, county of Butler, State of Ohio, in the presence of Charles Fox, attorney for the defendants, and Jacob White, agent for the plaintiff. The said deposition of Matthew Winton, who being sick, was taken at his house in said town, and the deposition of said John Riley being taken at the clerk's office in said town, according to the notice hereto attached, and by the consent of the above attorney and agent. I further certify, that the said deposition of Matthew Winton was taken and wholly reduced to writing by myself, in the presence of said parties and the said witnesses, and was subscribed by the said witness in my presence. I further certify, that the said deposition of John Riley was wholly reduced to writing by the said Riley, and by him subscribed in my presence, and in the presence of the attorney and agent aforesaid. I further certify, that I am not of counsel nor attorney to either the said plaintiff, or lessor, or said defendants, named in said notice and caption, neither am I, in any way or manner, interested in the event of said suit. I further certify, that the place of taking said depositions is more than one hundred miles from Columbus, in the State of Ohio; and

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I further certify, that each of said deponents, Matthew Winton and John Riley, were, previous to reducing said depositions to writing by myself, duly sworn to tell the truth, the whole truth, and nothing but the truth, between the said John Doe, ex. dem. Edward White, plaintiff, and the said the president, recorder, and trustees of the town of Cincinnati are defendants, in which suit the said depositions are to be used as evidence.

In witness whereof, I have hereunto set my hand and seal, this nineteenth day of October, one thousand eight hundred and twenty-nine.

WILLIAM HUNTER, *J. P.* [SEAL.]

United States' circuit court 7th circuit, district of Ohio.

JOHN DOE, ex dem., Edward White,
vs.
The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati. } *In ejectment.*

Ethan Stone, a witness produced and sworn on the part of the defendants, deposes and says, that the north half of lot number four hundred and sixty-five, on Front street, in Cincinnati, opposite lot number seventy-six, has been, for five or six years past, lying open as a common, and that the corner lot immediately west of it, and the brick building which formerly stood thereon, was occupied by the city of Cincinnati as a council chamber and mayor's office, until within about three years, when said building was torn down by order of the city council, and the ground was paved as a public landing by the city council.

Question by plaintiff's attorney. Do you know that Edward White had a frame warehouse on said lot number four hundred and sixty five?

Answer. I know that there was such a house on said lot, but I do not know to whom it belonged.

Question by same. What became of said house?

Answer. I was absent at the time, but on my return was told it had been torn down by the citizens of Cincinnati.

Question by the same. Do you know that there was a new cellar opened in front of the building, and between it and the street, for a new building?

Answer. I know there was such a cellar commenced there.

Question by the same. How was that cellar filled up?

Answer. I have understood that it was filled up by the citizens of Cincinnati, or by order of the city council. And further deponent saith not.

ETHAN STONE.

Samuel Still, being duly sworn, deposeth and saith, that he has known the land between Broadway and Main street, south of Front street, including the aforesaid lot four hundred and sixty-five, for thirty-one years; and during the whole of that period it was called a public common; during the last seven or eight years, it has been exclusively used as a public common and landing by the city of Cincinnati.

Question by plaintiff's attorney. Do you know that there was a frame building on the lot in question, and what became of it?

Answer. I know there was a frame building there, but do not know what became of it. And further saith not.

SAMUEL STILL.

Griffin Yeatman, being duly sworn, deposes and says, that he has resided in Cincinnati about thirty-four and lived most of the time on Front street, in the neighborhood of the lot in question; and during the whole of that time, the land south of Front street, between Broadway and Main street, was reputed to be, and claimed as a public common. About the year eighteen hundred and twelve, Captain Jacob White erected a building on that part of said land which lies opposite lot number seventy-six, and I then understood he claimed that part of it; up to the time of erecting said building, said land was passed and repassed, and used as a public common and highway; deponent does not know that William Lemon, the grantor of Jacob White, was ever in possession of any part of said land, or that John Dailey, the grantor of said Lemon, ever was.

Question by plaintiff's attorney. Do you know what became of the building that was erected on said land?

Answer. I understood that it was destroyed by the citizens of Cincinnati. And further deponent saith not.

GRIFFIN YEATMAN.

John Riddle, being duly sworn, deposes and says, that he has known the land referred to in the foregoing depositions since the year seventeen hundred and ninety. Deponent cleared said strip of land; when deponent cleared it, he understoood that it was a public common; deponent cleared the said land in seventeen hundred and ninety-one and ninety-two.

Question by plaintiff's attorney. At what time did Judge Symmes tell you that he was the owner of that tract of land?

Answer. Some time before the Judge sold the same to Joel Williams.

Question by the same. Do you remember that there was a warehouse erected on that ground in front of lot seventy-six?

Answer. I do.

Question by the same. Do you know what became of the warehouse?

Answer. I understood that it was destroyed by the citizens of Cincinnati.

Question by the same. Do you know that John Dailey owned that lot, and that he dug the cellar on it?

Answer. He told me he owned the lot, and I know the cellar was dug, but I do not know who dug it, or caused to be dug. And further saith not.

JOHN RIDDLE.

James Riddle, being duly sworn, deposeth and saith, he has known the strip of land south of Front street, between Broadway and Main street, since the month of March, seventeen hundred and ninety-three; in the winter of seventeen hundred and ninety-four, five, in a conversation which I had with Joel Williams, said Williams stated that the proprietors had intended said strip of land as a public common, but if he succeeded in purchasing out their interest, he would show them to the reverse.

Question by plaintiff's attorney. Do you know that Jacob White erected a frame building on the said strip opposite to lot number 76?

Answer. I do; and I also know that he stored flour in the house.

Question by defendant's counsel. Do you know when said house was erected?

Answer. About the year eighteen hundred and twelve. And further deponent saith not.

JAMES RIDDLE.

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THE STATE OF OHIO, CITY OF CINCINNATI, ss.

I, Isaac G. Burnet, mayor of the city of Cincinnati aforesaid, not being attorney or of counsel for either of the parties in the aforegoing suit, nor in any way interested in the event of the same, do hereby certify, that the foregoing depositions of Ethan Stone, Samuel Still, Griffin Yeatman, John Riddle, and James Riddle, were taken before me at the mayor's office in said city, on the twenty-third day of June, eighteen hundred and twenty seven, by consent of parties, without notice, both parties, by their attorneys, being present; that they were taken at the instance of the defendant; that said depositions were reduced to writing by me at said time and place, and so also subscribed by them, the said deponents, respectively, in my presence, the same deponents being by me first duly sworn according to law, and carefully examined and cautioned to testify the whole truth, relative to the matters in controversy in said suit; and that the reason for taking said depositions was, that the residence of the said deponents, at the city of Cincinnati aforesaid, is at a greater distance from Columbus, in the State of Ohio aforesaid, than one hundred miles.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this twenty-third of June, eighteen hundred and twenty-seven.

ISAAC G. BURNET, *Mayor.* [SEAL.]

And also introduced several witnesses, to wit, Isaac Bates, John S. Wallace, and William Ruffin, who testified as follows, to wit: The said Isaac Bates testified that he came to the spot on which Cincinnati is now laid out with John Cleves Symmes, in the fall of 1788; that, in the spring of the ensuing year, Matthias Denman, Israel Ludlow, and Robert Patterson, who represented themselves as and were recognised by said Symmes as the owners of the section and fraction on which said town of Cincinnati now stands, proceeded to lay out the said town, and did then and there lay out the same, designating the lots by number, and staking the same out, donating to the first thirty settlers a lot each in said town; at the time of laying out which town, at the time of the sale of lots, and always afterwards, deponent knew that said proprietors recognised the said premises contained in the deed from John Cleves Symmes to Joel Williams, under which the plaintiffs claim, and marked A, aforesaid, as a public common; that he knew that the same was set apart and dedicated for such purpose in 1789; that he had heard all the proprietors, when assembled together, and separately, assert that the same was thus dedicated and set apart; that lots were sold under these assurances; and when deponent applied to purchase a part of the common, he was refused by the proprietors; and they then informed him that they had parted with all their interest therein, except the right of ferry.

John S. Wallace testified that he came to what is now the town of Cincinnati, in 1789, when he found the lots in said town laid out and staked; that in-lots were laid out in the land claimed by the plaintiff; that deponent then understood from the proprietors that the said property had been reserved and dedicated to the public as a common, for the use and benefit of the inhabitants of said town; that ever since that period, the said premises had been held and occupied as a public common, with the exception of the incumbrance erected by the plaintiff and his grantors, which were, from time to time, as they were erected, abated by the city council and the citi-

zens. He also stated there was a blacksmith shop on the common in early times, which remained several years, but the occupiers claimed no title to the land.

William Ruffin testified that he came to Cincinnati in 1793; that the land in dispute was then claimed as a common by the public; and from that period to the present time has been claimed, and with the exception of some incumbrances on a part thereof, erected by the plaintiff and his grantors, has always been occupied and claimed by the public. He further testified that Williams and Dailey were residents of Cincinnati for a long time previous to 1800.

Ichabod B. Miller also stated that, in 1791 or 1792, he applied to John C. Symmes to purchase a piece of ground, in what is called the town common of Cincinnati, for the purpose of establishing a ferry. He also applied to Israel Ludlow for the same purpose; Symmes stated to him that he could not sell him the ground, that it was a part of the common, and deponent therefore abandoned all idea of making a purchase.

The defendants also offered and read in evidence the deed from John C. Symmes to Matthew Winton, dated 16th August, 1795, for lot No. 27, and marked H, as follows, to wit:

This indenture, made the sixteenth day of August, in the year of our Lord 1795, between John Cleves Symmes, of the county of Hamilton, and territory of the United States northwest of the river Ohio, of the first part, and Matthew Winton, of the same county, of the other part, witnesseth, that the said John Cleves Symmes, for and in consideration of the sum of certificate dollars, to him in hand well and truly paid, at or before the ensealing and delivery hereof, by the said Matthew Winton, the receipt whereof the said John Cleves Symmes doth hereby acknowledge, and thereof and therefrom doth clearly acquit, exonerate, and discharge the said Matthew Winton, his executors and administrators, have given, granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do fully give, grant, bargain, and sell unto the said Matthew Winton, and to his heirs and assigns, forever, all that part of a certain town lot, No. 27, situate in the town of Cincinnati, between Fort Washington and the mouth of Mill creek, in the Miami purchase, in the county aforesaid, bounded as follows, viz: the length of the house which William McMillen, Esq. built in Cincinnati, and lately lived in, thirty-two feet, fronting the ground left for a common or public way, along the bank of the Ohio on the south, and from the southwest corner of the said house along Sycamore street, one hundred and sixty-eight, to a line running across part of the said lot, being property of Robert Mitchel; thence along said line eastward forty-nine feet and a half; thence southwardly, along Reed's line, one hundred and thirty-seven feet, to a line dividing a part of the said lot, the late property of Thomas Goudy, Esq.; thence westerly seventeen feet and a half, to the northeast corner of said house; thence southwardly, along the east wall of the said house to Front street, or the way and common first mentioned: to have and to hold the before granted premises, with the appurtenances and privileges, and to his heirs and assigns, for their own proper use, benefit, and behoof forever; and the said John Cleves Symmes, for his heirs, executors, and administrators, doth covenant, promise, and agree unto and with the said Matthew Winton, and his heirs and assigns, that, at the time of the ensealing and delivery hereof, he is the true, sole, and lawful owner, and is lawfully seized of the same by the purchase from the United

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States, and hath in himself full power and lawful authority to sell and convey the same in manner and form aforesaid; and the said John Cleves Symmes doth further covenant with the said Matthew Winton, and with his heirs and assigns, that all and singular the premises and lot aforesaid, unto the said Matthew Winton, and to his heirs and assigns, and against all lawful claims and demands, he, the said John Cleves Symmes, and his heirs, will well and truly warrant, and forever, by these presents, defend.

In witness whereof, the said John Cleves Symmes, together with Susan his wife, who hereby relinquishes her right of dower in the premises, have hereunto severally set their hands and seals the day and year aforesaid.

JOHN C. SYMMES, [SEAL.]
SUSAN SYMMES. [SEAL.]

Sealed and delivered in presence of
LOT FRENCH,
LUKE FOSTER.

HAMILTON, ss.

Before me, Aaron Caldwell, one of the justices of the court of common pleas in the said county, came personally John Cleves Symmes, and Susan his wife; and the said Susan being examined secretly, separately, and apart from her said husband, and declaring herself to be under no coercion or compulsion, and of lawful age, did acknowledge the within instrument to be their voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal, the second day of November, 1796.

AARON CALDWELL. [SEAL.]

THE STATE OF OHIO, HAMILTON COUNTY, sct.

I, Griffin Yeatman, recorder in and for the county of Hamilton aforesaid, do certify that the foregoing deed of conveyance is a true copy, taken from the records of said county, as the same stands recorded in book A, page 442, &c.. (and recorded November 2, 1796.)

In testimony whereof, I have hereunto subscribed my name, and affixed my seal official, at Cincinnati, this 12th day of July, 1828.

GRIFFIN YEATMAN, *Recorder*. [SEAL.]

The defendants also offered in evidence the decree of the Supreme Court of the State of Ohio, between the president, recorder, and trustees of the town of Cincinnati, and Joel Williams, in chancery, which said copy is marked I, as follows, to wit:

The PRESIDENT, RECORDER, and TRUSTEES of the town of Cincinnati, *vs.* JOEL WILLIAMS. } *Chancery.*

Pleas at Cincinnati, in the county of Hamilton, before the Hon. Samuel Huntington, Daniel Symmes, and George Todd, Esqrs., Judges of the Supreme Court of the State of Ohio, on the second day of November, A. D. eighteen hundred and seven.

To the Honorable the Judges of the Supreme Court, in chancery sitting, in and for the county of Hamilton, humbly complaining, sheweth unto your

honors, your orator, the president, recorder, and trustees of the town of Cincinnati, in the county of Hamilton, that, some time in the year of our Lord 1787, John Cleves Symmes, of the county of Hamilton, in the State of Ohio, formerly a citizen of the State of New Jersey, in and by a certain publication signed by the said John, and bearing date on or about the 26th day of November, 1787, addressed "to the respectable public," among other things did set forth and declare, that the honorable the Congress, by their act of the 3d October, 1787, authorize the honorable the treasury board to enter into a contract with him for a certain tract of land, beginning at the mouth of the Great Miami river; thence running up the Ohio to the mouth of the Little Miami river; thence up the Little Miami to a place where a due west line to be continued from the western termination of the northern boundary line of the grant to Messrs. Sergeant, Cullen, and Company, shall intersect the said Little Miami river; thence due west continuing the said western line to the place where the said line shall intersect the main branch or stream of the Great Miami river; thence down the Great Miami river to the place of beginning; on condition that the said tract should be surveyed and its contents ascertained by some proper officer of the United States, who should plainly mark the said east and west line, and render one complete plat thereof to the board of treasury, and another to the purchaser or purchasers; and that the said purchaser or purchasers, within seven years, should lay off the whole tract, at their own expense, into townships and fractional parts of townships, and divide the same into lots, according to the land ordinance of the 20th May, 1785, and make complete returns thereof to the treasury board; that the price of the said land should be one dollar per acre, excepting for certain reservations and gifts set forth in the said publication, payable in specie, loan office certificates reduced to specie value, or certificates of liquidated debts of the United States, subject to a reduction, by allowance for bad lands, and all incidental charges and circumstances whatsoever, one-third of a dollar per acre; and that in making payment, the principle of the said certificates only would be received; and that the board of treasury, for such interest as might be due on the certificates rendered in payment as aforesaid, should issue indents to the possessors, that two hundred thousand dollars of the purchase money should be paid down, on which payment the purchaser or purchasers should have a right to enter and occupy a part of the said land, not exceeding three hundred thousand acres, which privilege should be enlarged from time as future payments should be made acquainted with the nature of the contract entered into by the said John C. Symmes, for himself and associates; the said John begged leave, in the said publication, to communicate to such gentlemen as were desirous of becoming his associates, the scheme adopted for sale and settlement, which should be considered as fundamental thereto by every purchaser and settler; that the first necessary measures was to raise two hundred thousand dollars, and, for that purpose, that land warrants should be issued by the said John, or other person appointed, for any number of acres not less than 160, or a quarter part of a section, and always making the warrant for township, section, or quarter part of a section; that such warrant should authorize the person purchasing the same, his heirs or assigns, to elect and choose, in his own person, or by his or their agent, such township or lot, or quarter of a lot, as might be most agreeable to the holder of the warrant, provided the same township or lot, or quarter of a lot, be not previously located and entered on record by a prior applicant; that a plat or map of the land should lie before the register at his office, to be kept on the ground, on which the land elected

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should be noted; that the land applied for should be recorded as sold to the owner of the warrant, and an entry made thereof on the map; that the price of the land was two thirds of a dollar per acre, and that the price would be from time to time augmented, but that the certificates avised by such augmentations should be appropriated to the making of roads and bridges in the purchase; and the said John did further state that each purchaser, at the time of purchasing his warrant, should pay one penny per acre for the purpose of defraying the expense of surveying the land, and one farthing per acre in specie, &c., to defray the expense of printing land warrants, purchasing books, paying the register, and other incidental charges; that provision should be made for securing the purchaser who should pay for a greater number of acres than were contained in his locations; and that after location and entry, the register should proceed to make out a patent under his hand and special seal, for this purpose provided, to the purchaser for a township, lot, or quarter of a lot, so located and entered, which should be evidence of the transfer of the fee thereof to the patentee, his heirs and assigns, for ever; that every locator should, within two years after location entered, cause his lands to be represented, and, if practicable, improved; that said John C. Symmes reserved to himself no other privileges, as a compensation for his agency in the business, than the right of locating certain lands specified in the said publication; and all persons who might think fit to become his associates, were directed to apply to certain agents therein named, as by the said publication, reference being thereto had, will, among other things, more fully and at large appear.

And your orators further state to your honors, that some time in or about the month of January, A. D. 1788, one Matthias Denman, of the State of New Jersey, became an associate of the said John Cleves Symmes, agreeably to the terms and conditions of the said publication, by purchasing and entering sundry tracts or lots of land, and among others of the 17th fractional section in the fourth fractional township east of the great Miami river, in the first fractional range of townships on the Ohio river, on which the town of Cincinnati, in the county of Hamilton, is in part laid out and built, commonly called the town fraction; and also the entire section, No. 18, adjoining thereto, commonly called the town section; and that after the said purchase and entry by the said Matthias Denman as aforesaid, and some time within and before the expiration of the said year of our Lord 1788, one Robert Patterson, late of the State of Kentucky, now a resident in the State of Ohio, and one Israel Ludlow, late of said county of Hamilton, deceased, severally purchased from the said Matthias Denman the one equal undivided third part of the said fractional section No. 17, above described, and of the entire section No. 18, adjoining thereto, so that the said Robert and Israel became each a proprietor of one equal undivided third part of the said fractional section No. 17, and the said entire section adjoining thereto, according to the terms and conditions of the before stated publication; and that shortly after the said Robert and Israel had become proprietors, as aforesaid, they, the said Matthias, Robert, and Israel, entered into an agreement for laying out and establishing a town on the said fraction and section of land, and in pursuance of the said agreement, some time in or about the month of January, in the year of our Lord 1789, the said Robert and Israel landed on the ground where the town of Cincinnati now stands, and the said Robert and Israel, (who then acted in the joint capacity of proprietor, and of an agent for the said Matthias,) proceeded to lay off

the said town of Cincinnati in manner and form as the same hath since been recorded by the said Israel, as one of the original proprietors, in the office of the recorder for the county of Hamilton; and for the accommodation of the first thirty settlers in the said town, who had been promised severally an in-lot and an out-lot as an encouragement to the settlement of the town, the said proprietors, in the first instance, laid out the front of the said town as far westwardly as Main street, and assigned to each of the said settlers his particular lot or donation by draft, and as a further inducement to persons to become purchasers of lots and settlers in the said town, and for the future convenience of the citizens, and as an ornament to the said town, the said proprietors then set apart all the ground lying between Front street and the Ohio river, extending from the eastern boundary of the said town fraction No. 17, to Main street, and then and there gave, and publicly declared, the said ground to be a common for the use of the citizens of the said town forever, reserving to themselves only the right of establishing a ferry on the bank of the Ohio on the said common; and the said tract of ground, bounded northwardly by Front street, eastwardly by the eastern boundary of the town fraction No. 17, southwardly by the Ohio, and westwardly by Main street, was then and there received and hath from that time been wholly claimed, and until the trespass herein after complained of, the said ground hath been held and enjoyed as a public common for the benefit and convenience of the citizens of the said town. And it is further stated to your honors, that after the said town had been laid out, and the above described ground given to the citizens of the said town by the proprietors thereof for the purposes of a common aforesaid, an accurate survey was made of that part of said purchase including the said town, according to the above in part recited publication of the said John Cleves Symmes, by which the said proprietors were enabled to ascertain with certainty the lines and numbers of the said section and fractional on which the town of Cincinnati had been laid out, and thereby to obtain more specific entries thereof on the book of the register of the Miami land office, as was done with respect to the said fractional section No. 17, on or about the fourth day of April, A. D. 1791.

And your orators further shew, that after the above transactions, and some time in and about the month of September, A. D. 1794, letters patent were granted by the President of the United States to the said John C. Symmes and his associates for a part of the land described in the before mentioned publication, including the said town, whereby the proprietors and settlers thereof became entitled to receive conveyances in severalty for their lots, commons, and public grounds, being associates of the said John, in proportion to their respective claims. And they further state, that afterwards, on or about the 26th day of November, A. D. 1794, one Samuel Freeman, a citizen of the said town, contracted with the above named Robert Patterson, and purchased of him his remaining interest as a proprietor of and in the town; and that, on or about the fourth day of March following, Joel Williams, also a citizen of the said town, whom your orators pray may be made a defendant to this their petition, contracted with and purchased of the above named Matthias Denman, his right as a proprietor in the said town, the said Joel and Samuel well knowing the sales and donations that had been made by the original proprietors, and especially knowing that all the said tract of land lying between Front street and the Ohio river, and between the eastern boundary of the town fraction and Main street, as above particularly de-

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scribed, had been set apart and given by the above named original proprietors as a public common for the accommodation of the citizens of the town, and the said Joel well knew long before he contracted with the said Matthias, not only that the said ground had been given for the purpose aforesaid, but that the original proprietors had, in fact, received therefor a valuable consideration from the purchasers and settlers in the town, by receiving a large price for the lots they sold, in consequence of their being rendered more valuable by reason of the said advantages to be derived from the said common.

And your orators further show, that on the original map or plat of the said town of Cincinnati, as made by the original proprietors, the whole of the tract of land above described, which is claimed by your orators on behalf of the town of Cincinnati as a common for the benefit of the citizens thereof, was left vacant, no lots or streets being laid off on or through the same, but all the lots and streets numbered and named on the said original map terminated at the boundary of the said common, which original map so containing the said common was in the possession of the said Joel Williams several years before he pretended to claim any part of the said common. And they further charge, that the said Joel, before he became a town proprietor under Matthias Denman, frequently conversed with divers persons respecting the said common, speaking of it as being highly necessary and useful to the town, expressing much anxiety that it should be preserved as a common, and intimating his fears lest the proprietors, at some future day, should attempt to reclaim the said land for private uses, in as much as they had not executed a deed therefor to the town, and as the original map might be suppressed; but to guard against such an event the said Joel requested those with whom he conversed to bear it mind that the said ground had been publicly given as a common.

And your orators further charge, that after said Samuel and Joel had become proprietors, as aforesaid, it was agreed and understood between them and the said Israel, as proprietors, and the above named John C. Symmes, that the fee of the said town should continue in the said John where it was supposed to vest in trust, and that all deeds for town lots sold should be executed by the said John to the purchaser or purchasers, on their producing to him certificates signed by the proprietors, or any two of them, setting forth that the person producing the same was entitled to a deed for the lot or lots claimed, and that deeds should be issued on no other authority. In consideration of which premises, your orators well believe that the inhabitants of the said town were perfectly secure in their right to the aforesaid common. But so it is, may it please your honors, that the said Joel, combining and confederating himself with himself, with divers other persons at present to your orators unknown, whose names, when discovered, your orators pray may be inserted in this their bill of complaint with apt and proper words to charge them, he, the said Joel, in order to deprive the citizens of the said town of Cincinnati of all the benefits and advantages of the said common so given and described as aforesaid, hath procured from the said John C. Symmes a deed of conveyance therefor in his own name, bearing date on or about the 14th of February, A. D. 1800; and although he, the said Joel, at the time of obtaining the said deed, was and still is one of the proprietors of the said town, and as such bound in equity and good conscience to procure for and secure to the citizens of the said town of Cincinnati the said tract of land, for the purposes aforesaid; and although the said Joel

well knew, before and at the time of procuring the said deed, that the said land had been given by the original proprietors to the citizens of the said town, for the purposes of a common, and that it had been held and enjoyed as such, from the time the said town was laid out until the day of the date of the said deed so given by the said John to the said Joel, yet the said Joel, under color of his deed aforesaid, does claim the said ground so given and described as above in his own right, and hath taken possession of the same, or of a part thereof, and hath erected, and still doth continue to erect thereon, divers buildings, enclosures, and other nuisances, to the great annoyance and injury of the citizens of the said town, and doth pretend, and give out in speeches, that neither your orators nor the citizens of the said town have any right or claim to the said ground as a common, but does pretend that the same was reserved by the original proprietors for their future disposition. And at other times the said Joel does admit, that, at the time of the laying out of the said town by the original proprietors, the said ground was set apart and promised as a common, but that the said town was laid out before a specific entry had been made of the town fraction, and that, therefore, the said proprietors had no right to dispose of the same in manner aforesaid, whereas your orators charge, and the said Joel well knows, as the fact is, that the said original proprietors, at the same time that they laid out the said town, and assigned to the first settlers there several lots therein, did set apart, and publicly give, the tract of land above described, to remain as a common for ever; and, also, that before the said town was laid out as aforesaid, the above named Matthias Denman had contracted with the above named John C. Symmes for the whole of the ground on which the said town was laid out, extending to the Ohio river; and, also, that the said town was laid out in manner aforesaid, with the knowledge and approbation of the said John C. Symmes, who did not object thereto as he ought and would have done, had not the said Matthias purchased or contracted for the land covered by the said town as is hereinbefore mentioned; and as the said Joel well knew, and upon the pretence aforesaid, the said Joel hath refused to give effect to the aforesaid donation of the original proprietors, by conveying the said ground to your orators, for the purposes and uses intended by the original donors, or even to permit the citizens of the said town to use the same as a public common, but hath laid it out into town lots, claiming it as a private property, and is proceeding as fast as possible to erect, on various parts thereof, nuisances highly injurious to the citizens, and altogether inconsistent with the design of the proprietors of the said town.

And your orators further charge, that, by reason of the enclosures aforesaid, the citizens of the said town are annoyed and obstructed in passing and repassing to and from the bank of the Ohio, where they have been wont to resort across the ground so enclosed for the purpose of obtaining water. All which actings and doings of the said Joel and his confederates are contrary to equity and good conscience, and tend to the wrong and injury of your orators and the citizens of the said town. In tender consideration whereof, and in as much as your orators are altogether remediless in the premises by the strict rules of the common law, and cannot compel a conveyance of the ground so set apart and given as a common, nor obtain a due execution or any specific performance of the agreement and donation aforesaid, or cause the said nuisances erected and erecting on the said common by the said Joel and his confederates to be enjoined, or be otherwise relieved in the premises, but by the aid and assistance of the equity and juris-

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diction of this honorable court to the end therefore, and in order that the said Joel and his confederates (when discovered) may, upon their corporal oaths, true and perfect answer make to all and singular the premises hereinbefore set forth, as fully as if the same were here again repeated, and particularly interrogated, to be answered unto; and more especially, that the said Joel, according to the best of his knowledge, information, and belief, may answer and set forth whether the said town of Cincinnati was not laid out early in the year 1789 by Israel Ludlow and R. Patterson, two of the original proprietors thereof; whether the said Israel did not act at the same time as the acknowledged agent of Mr. Denman, the other proprietor; and whether the said town was not laid out before the Miami purchase had been surveyed and divided into ranges, townships, and sections; and whether the lots on Front street, above Main street, were not distributed as donations among the first settlers in the town, and whether he hath not frequently seen, and had in his possession, the first map of Cincinnati, made by the original proprietors thereof; and whether, on the said map, the ground lying between Front street and the Ohio river, and extending from Main street to the eastern boundary of the town fraction, was not left as a common entirely vacant; and also whether the said Joel did not know before he became a proprietor of the town, that the land aforesaid was set apart, and publicly given, and declared to be a common, and that the same was held and enjoyed as such by the citizens of the town in manner as herein above stated; and that the said Joel may further, on his oath, say whether he did not know or understand that the aforesaid Matthias Denman, who was the first locator of the land commonly called the town section and fraction, had contracted with Judge Symmes for the land now covered by the town of Cincinnati, before the said town was laid out, and whether he does not know or hath not heard the said John C. Symmes say, that the said town was laid out with his knowledge and approbation; and whether he does not know that deeds have been executed to the proprietors of lots on Front street bounding the said lots on the common; and whether he was not one of the general proprietors of the town at the time he obtained a deed from John Cleves Symmes for the land above claimed as a common; and whether, in his contract as above stated with the said M. Denman, he did not consider himself as purchasing subject to former sales and donations; and whether, before he had contracted with M. Denman as aforesaid, he did not know that the said tract of land had been set apart and given as a common in manner aforesaid; and whether, as well before as since his purchase from the said M. Denman, he hath not often conversed with citizens of the town, or others, respecting the importance and public utility of the said common, expressing fears lest the proprietors should at some future day attempt to evade their donation, and appropriate the ground to private use; and whether it was not agreed between the proprietors and John C. Symmes, for the convenience of the proprietors, that the fee of the town should remain in the said Symmes in trust, and that he should execute deeds to the purchasers and donors of lots on their producing to him certificates of their rights signed by the proprietors, or any two of them; and whether he did not claim and obtain the aforesaid deed, conveying to him the tract of land above described as a common, in virtue of his being a proprietor of the town by purchase from M. Denman, and what was the true consideration he gave for the said deed; and whether it was the estimated value of the land at the time of receiving the said deed, or merely a balance due

from the proprietors of the said town on the town fraction; and that the said Joel, holding the fee of the said common in himself, and pretending to claim it in his own right, may be decreed to execute the agreement of the original proprietors of the said town of Cincinnati, by conveying the lands so given as aforesaid, for the purposes of a common, (reserving only the right of a ferry on the bank of the Ohio river,) to your orators, or to such other persons as your honors may nominate as trustees for the purposes as aforesaid; and that the citizens of the said town may be admitted to use and enjoy the said common, and that the nuisances erected thereon may be removed, and in the mean time that the enclosures on the said common may be thrown open, and all further nuisances enjoined until the final decree of your honors on the premises be known, and that your orators, on a full and fair discovery of the matters and things aforesaid, may give such other and further relief touching the premises, as shall be agreeable to equity, and as your honors shall think fit.

May it please your honors to grant to your orators a writ of injunction, &c., and also a writ of subpœna, directed to the said Joel Williams, thereby commanding him on a certain day, and under a certain pain therein to be inserted, personally to be and appear before your honors in this honorable court, then and there to answer the premises, and to stand to and abide such answer and decree therein, as to your honors shall seem agreeable to equity and good conscience, and your orators shall ever pray, &c.

JOSEPH PRINCE, *Pres't.*

Seal of the corporation of Cincinnati, affixed this 11th of August, 1814.

MATTHEW NUNIMO, *Clk.* [SEAL.]

HAMILTON COUNTY, ss.

The PRESIDENT, RECORDER, and TRUSTEES of the town of Cincinnati, *vs.* JOEL WILLIAMS. } *In chancery.*

Answer.

The answer of Joel Williams, the defendant to the bill of complaint of the president, recorder, and trustees of the town of Cincinnati, complainants:

This defendant now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantages of exception that may be had or taken to the many errors, uncertainties, and manifold insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or unto so much thereof as the defendant is advised is material or necessary for him to make answer unto, he answereth and saith, that, some time previous to the twenty-fifth day of August, in the year one thousand seven hundred and eighty-eight, one Matthias Denman, of the State of New Jersey, mentioned in the bill of your petitioners, purchased of one Joseph Halsey, jr., a land warrant, under John C. Symmes, also mentioned in the said bill of your petitioners, for six hundred and forty acres of land, to be laid out within the tract granted by the Honorable Congress of the United States to the said John C. Symmes, in manner as set forth in the bill of your petitioners; which said warrant was, by agreement of said parties, to be laid as nearly opposite the mouth of Licking river, as an entire section of land could be found after the said land should be divided into townships and sec-

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tion, and in pursuance of said agreement said warrant was afterwards laid on a tract of land now known by the name of the entire section No. 18, on which the town of Cincinnati in part now stands, and also mentioned in the bill of your petitioners.

And your respondent begs leave further to state to your honors, that, after said purchase so made as aforesaid, by the said Matthias, of said warrant as aforesaid, he, the said Matthias, on or about the twenty-fifth day of August, in the year one thousand seven hundred and eighty-eight, entered into a contract with one Robert Patterson, named in the said bill of your petitioners, and one John Filson, of Lexington, Kentucky, whereby the said Matthias conveyed and sold, and conveyed said Robert Patterson, and the said John Filstore, two equal undivided third part of all his, said Denman's, right, title, and interest of and to said land so claimed by virtue of said warrant so purchased as aforesaid, and the said Matthias, Robert, and John, then and there further agreed, that all and every institution, determination, and regulation respecting the laying off a town, and establishing a ferry at and upon the premises so holden by virtue of said warrant, should be the result of the united advice and counsel of all the parties to said agreement.

And your respondent begs leave further to state that it was afterwards further agreed by and between the said Matthias, Robert, and John, that a town should be laid out at and upon the premises; and in pursuance of said agreement, the said Matthias and the said John constituted and appointed one Israel Ludlow, also mentioned in the bill of your petitioners, their agent, and, together with the said Robert Patterson, one of the proprietors, some time in and about the month of September, in the year one thousand seven hundred and eighty-eight, landed on the ground, and shortly after proceeded to survey and lay out a part of the lots on which the town of Cincinnati now stands.

And your respondent would further state to your honors, that the said Israel Ludlow never was, to the knowledge of your respondent, nor did he ever act as a proprietor of said town, but that he acted merely as the agent of the said Matthias and the other proprietors of said land claimed by virtue of said warrant as aforesaid.

And your respondent would further show to your honors, that a part on which the town of Cincinnati now stands was laid out by the said Israel Ludlow, acting in the capacity of agent as aforesaid, and the said Robert Patterson, one of the proprietors as aforesaid, before the Miami purchase had been surveyed and laid out into ranges, townships, and sections; that the said lots bounding southwardly on Front street, and westerly on Main street, were first laid out, and that all the lots northerly of Front street, opposite the land claimed as a common, bounding westwardly on Main street, and extending northerly as far as the foot of the hill, (which is now called the bottom,) were considered as donations for the use and benefit of the first settlers of said town; that said lots, to the number of sixty, were assigned by draft, two to each of the said settlers, as his particular donation, thirty being in-lots, the same number of out-lots or thereabouts.

And your respondent would further state to your honors, that the lands lying between Front street and the Ohio river, and claimed as a common by your petitioners, was, by the said Israel Ludlow, acting in the capacity of agent as aforesaid, and the said Robert Patterson, reserved until the Miami purchase should be surveyed or laid out into ranges, townships, and

sections, when it would be more fully ascertained whether said lands claimed as aforesaid would fall within the entire section, opposite the mouth of Licking river; and in case said land should fall within said entire section, then the same would be considered as being reserved for the use of said Denman, Patterson, and Filson, proprietors as aforesaid, to be by them laid out and disposed of, as they, at any future period, should deem most conducive to their own interest and advantage; all of which was publicly declared by the said Israel Ludlow, acting in the capacity of agent as aforesaid, as your respondent has frequently heard, and verily believes, to be true.

And your respondent would further state that he never knew, nor does he believe that the said proprietors ever publicly declared, the said land claimed as aforesaid to be a common for the use and benefit of the inhabitants of the town of Cincinnati, as stated in said bill of your petitioners, but that the same was reserved in manner as above stated.

And your respondent begs leave further to state to your honors, that, on or about the first day of April, in the year one thousand seven hundred and ninety-one, the said Matthias Denman, by Israel Ludlow, his agent, applied to the said John C. Symmes to purchase, and did in fact purchase of the said Symmes that tract of land now known by the name of fractional section No. seventeen mentioned in the bill of your petitioners, and the said John C. Symmes, in pursuance of said agreement, and on or about the same fourth day of April, in the year aforesaid, gave and executed his land warrant to the said Matthias Denman, for the number of acres said fractional section No. seventeen, as aforesaid, was supposed to contain, and did then and there deliver the same to the said Israel as agent of the said Denman as aforesaid, which said warrant so given by the said Symmes to the said Denman, was, by the said Israel, acting in the capacity of agent as aforesaid, laid on the said fractional section number 17, in pursuance of said agreement made with the said John C. Symmes as aforesaid.

And your respondent would further state to your honors, that, on or about the 26th day of November, in the year one thousand seven hundred and ninety-four, the said Robert Patterson contracted with one Samuel Freeman, then a resident of Cincinnati, as stated in the said bill of your petitioners, whereby the said Robert sold and conveyed to the said Samuel all his right and title as a proprietor of said town.

And your respondent would further state that the said purchase made by the said Samuel Freeman, of all the right, title, and interest of the said Robert Patterson as aforesaid, (to wit) on or about the seventh day of November, in the year one thousand eight hundred and three, your respondent entered into a contract with the said Samuel Freeman, whereby the said Samuel agreed to convey, and did in fact, for a valuable consideration, paid by your respondent, sell and convey to him, by good and sufficient conveyances, all his, said Samuel's, right, title, and interest as proprietor of said town as aforesaid.

And your respondent begs leave further to state to your honors, that, on or about the fourth day of March, in the year one thousand seven hundred and ninety-five, he, your respondent, entered into a contract with the said Matthias Denman, whereby the said Matthias agreed to convey, and did in fact, on or about the said fourth day of March, in the year aforesaid, for the consideration of five hundred and fifty dollars paid by your respondent, sell and convey by good and sufficient conveyance to your respondent the one equal undivided third part of all that certain tract of land, together with all and singular the appurtenances thereto belonging or in any wise appertain-

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ing, lying and being in the then northwestern territory and now State of Ohio, bounded on the west by the lands known by the name of Dayton's sections, on the north by lands known by the name of James Henry's sections, on the east by Judge Symmes's sections, and on the south by the Ohio river, thereby including all that tract of land known by the name of the entire section No. 18, and also all that tract of land known by the name of fractional section No. 17, on which the town of Cincinnati now stands, as described in the bill of your petitioners. And as answer to the charge stated in the bill of your petitioners, to wit, "that your respondent, before he became a town proprietor under the said Matthias Denman, frequently conversed with divers persons respecting the said common, speaking of it as being highly necessary and useful to the town, expressing much anxiety that it should be preserved as a common, and intimating his fears lest the proprietors at some future day should attempt to reclaim the said land for private uses, in as much as they had not executed a deed, &c."

Your respondent begs leave to state to your honors, that, having heard that said lands, claimed as a common by your petitioners as aforesaid, had been reserved in manner as before stated by the proprietors, your respondent did at several times converse with divers persons, citizens of said town, respecting said land claimed as a common aforesaid, requesting said citizens with whom he conversed to procure, or at least to endeavor to procure, a deed, or some note or memorandum in writing amounting to a conveyance of said land claimed as aforesaid, to the citizens or inhabitants of said town, for the use and purpose mentioned in said bill of your petitioners, but said citizens neglected to procure any instrument, note or memorandum in writing from the proprietors of said town, or from the said Matthias Denman, amounting to a conveyance, or any agreement to convey said lands, or any part thereof, so claimed as aforesaid.

And your respondent begs leave further to state to your honors, that, long before he became a proprietor of said town, under the said Matthias as aforesaid, he made inquiry both of the said Matthias Denman and of the said Robert Patterson, severally, whether the said land claimed as a common had been set off by the proprietors of said town, for the use of the citizens thereof, by them or either of them publicly declared to be a common granted by the said proprietors, for the uses and purposes as mentioned in the said bill of your petitioners, to which inquiry of your respondent, the said Matthias and the said Robert both severally answered that the said lands claimed as aforesaid had not by them, or by their direction, or with their knowledge or consent, set off as a public common, nor had they or either of them, as proprietors of said town, ever publicly declared the same to be set off, and given as such for the uses and purposes mentioned in said bill; but the said Matthias and the said Robert both severally declared to your respondent, that the said land so claimed as aforesaid, had been by them only, their agent as aforesaid, reserved in manner as before set forth in this your respondent's answer. And your respondent, relying on and verily believing the aforesaid affirmations of the said Matthias and the said Robert, so made as aforesaid, together with other corroborating circumstances, was induced, and under the impression that the said Matthias had a good right and title to all and every part of the said fractional section No. 17, and also the one equal undivided third part of the entire section No. 18 as aforesaid, did in fact enter into the contract aforesaid with the said Matthias Denman, whereby the said Matthias sold and conveyed to your respondent, in the manner

as before set forth, said lands so described as aforesaid, and under the same impressions your respondent contracted with and purchased of the said Samuel Freeman, claiming under the said Robert Patterson, all his, said Samuel's, right, title, and interest in said town, in manner aforesaid. In answer to the question stated in the bill of your petitioners, to wit, whether your respondent, in his contract with the said M. Denman, did not consider himself as purchasing subject to former leases and donations, your respondent states that he considered himself as purchasing subject to those donations that had actually been made of the lots lying north of Front street, and no others: and in answer to the question stated in said bill, to wit, whether your respondent does not know that deeds have been executed to the proprietors of lots on Front street, bounding the said lots on the common, your respondent answers and says that he does not, that he has heard that one deed has been drawn, bounding said lot south on the commons, by which your respondent supposed that said lot was considered as being bounded south on Front street, and not that Front street was actually included in said deed, thereby making said land claimed as a common the south boundary of said lot: and in answer to the question of your petitioners, stated in their said bill, to wit, whether your respondent did not claim, and obtain the deed conveying to him the tract of land described as a common, in virtue of his being a proprietor of said town, by purchase from M. Denman, and what was the true consideration he gave for the said deed, &c., your respondent begs leave to state to your honors, that, at the time your respondent contracted with and purchased from the said Matthias Denman his right and title to said land as before described, in addition to the said sum of five hundred and fifty dollars paid to the Denman as aforesaid, he, your respondent, assumed upon himself, as a part of the consideration or purchase money for said land, a certain sum of money due from the said Denman to the said John C. Symmes, by virtue of his, said Denman's, original agreement with the said Symmes in the purchase of said lands, or a part thereof, which said sum, so due as aforesaid from the said Denman to the said Symmes, and so by your respondent assumed as aforesaid, together with the said sum of five hundred and fifty dollars paid to the said Denman by your respondent as aforesaid, was considered as the real estimated value of said land at the time of the purchase made by your respondent as aforesaid; and in pursuance of said agreement and said assumption, your respondent, on or about the fourteenth day of February, in the year one thousand eight hundred, paid to the said John C. Symmes said sum of money so assumed as aforesaid, amounting to one hundred and eighty dollars, or thereabouts, and then there received from the said John C. Symmes a deed of conveyance of a part of said fractional section No. 17, so contracted for and purchased of the said John C. Symmes by the said Israel Ludlow, acting as agent for and in behalf of the said Matthias Denman aforesaid: and in answer to the question stated in the said bill, to wit, whether your respondent did not know, before he became a proprietor, that said land claimed as a common had been held and enjoyed as such, as stated in their said bill, your respondent begs leave to state to your honors, that said lands had never, to the knowledge of your respondent, been given and publicly declared by the proprietors to be a common, for the uses and purposes as stated in said bill, nor had the proprietors ever given to the citizens possession thereof as such, but that the same having been reserved in manner aforesaid, was suffered

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by the said Matthias Denman, proprietor thereof, after his purchase aforesaid from the said Symmes, to be vacant, he the said Matthias not exercising his rights to the same, as he was justly authorized and legally entitled to do, at any time he should deem proper, and conducive to his own interest and benefit; and in answer to the question of your petitioners, stated in their said bill, to wit, whether your respondent did not know or understand that the aforesaid Matthias Denman, who was the first locator of the land, commonly called the town section and fraction, had contracted with Judge Symmes for the land now covered by the town of Cincinnati, before the said town was laid out.

Your respondent begs leave to state to your honors, that he has ever understood that the said M. Denman had purchased said warrant for six hundred and forty acres, as before mentioned, before said town of Cincinnati was laid out, and that the same was, by agreement with the said Symmes, to be laid as nearly opposite the mouth of Licking river, as an entire section of land could be found after said Miami purchase should be divided into ranges, townships, and sections, as before mentioned; but your respondents never understood that the said Denman had contracted with Judge Symmes for that tract of land called the town fraction, until after that part of the Miami purchase, in which said fraction lies, had been divided into townships, sections, &c., to wit, on or about the fourth day of April, in the year one thousand seven hundred and ninety-one, as before stated.

And your respondent begs leave further to state, that, agreeably to the scheme for the sale and settlement of the Miami lands, published by the said John C. Symmes in the year 1787, said warrant for six hundred and forty acres of land could not have been laid otherwise than on an entire section, it being expressly provided in said publication of the said Symmes, in the tenth page thereof, "that no section be divided when the warrant contains a sufficient number of acres to cover the whole section."

And your respondent begs leave further to state to your honors, that, having purchased said land as aforesaid, and paid therefor a valuable consideration, relying on the justness of his claim as set forth in this his answer to said bill of your petitioners, and verily believing that his title to said land claimed as a common was good, effectual, and valid, both at law and in equity, hath laid said land out into lots, enclosed a part thereof, and hath, with the knowledge of your petitioners, laid out and expended large sums of money in erecting buildings, and making other improvements upon the premises.

And your respondent would further state, that there was not, either at the time of this pretended grant or donation, or at the time of the purchase made by your respondent of the said Denman as aforesaid, or at the time the said John C. Symmes gave and executed his said deed aforesaid to your respondent, any court or courts of chancery within this State or territory, nor any courts whatever, authorized to decree a specific performance of a contract; and your respondent, verily believing that said proprietors had a good right and title to said entire section No. 18 as aforesaid, and that the said Matthias Denman had also a good right and title to said fractional section No. 17 as aforesaid, both in law and equity, he, your respondent, was, under these impressions, induced to enter into the said several contracts as aforesaid, and in fact paid the full estimation value of said lands at the time of said several contracts so stated as aforesaid.

And your respondent would further state to your honors, that the corpo-

ration, now known by the name of the president, recorder, and trustees of the town of Cincinnati, was not in existence at the time of this pretended donation, nor was the same created or established until long after the aforesaid purchase of your respondent from the said Matthias Denman as aforesaid, nor till long after the execution and delivery of the said deed by the said John C. Symmes to your respondent, stated as aforesaid.

And your respondent would further state, that the corporation aforesaid have not, either by gift, grant, or purchase, or in any manner whatever, acquired any right or title to said lands, claimed as aforesaid, or to any part thereof; and this defendant denies all and all manner of unlawful combination and confederacy with which he is charged, without that that there is any other matter, cause, or thing in the complainants' said bill of complaint contained, material or effectual in law for this defendant to make answer unto, and not herein and hereby sufficiently answered, avoided, traversed, or denied, is true, to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in the law in this behalf most wrongfully sustained.

JOEL WILLIAMS.

Sworn and subscribed before me, the 11th day of March, A. D. 1806.
JOHN MAHARD, *J. P.*

The demurrer of Joel Williams, defendant, to the bill of complaint of the president, recorder, and trustees of the town of Cincinnati, complainants:

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the complainants' bill mentioned, to be true in such manner and form as the same are therein and thereby set forth and alledged, doth demur, and for cause of demurrer showeth that the complainants have not shown themselves entitled to the relief prayed in and by their bill aforesaid of complaint.

2d. That adequate and complete remedy may be had at law, for the injury complained of in the complainants' said bill of complaint.

3d. That there is no equity contained in the said bill; wherefore this defendant doth demur to the said bill of complaint, and to all the matters and things therein contained, and humbly demands the judgment of this honorable court, whether he shall be compelled to make any further or other answer thereto, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY BRUSH,
Counsel for defendant.

The replicants, saving to themselves all manner of advantages of exception to the manifold insufficiencies of the said answer, for answer for replication thereto, say, they will aver and prove their said petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto, without that, that any other matter or thing whatsoever in the said answer contained, material or efficient in the law to be replied unto, and herein not replied unto, confessed and avoided, traversed or denied, is true; all which

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matters and things these replicants are and will be able to aver and prove, as this honorable court shall award, and humbly pray as in and by the said petition they have already prayed.

JACOB BURNET,
Attorney for the complainants.

Copies of depositions on file in the Clerk's office of the Supreme Court of the State of Ohio, in and for the county of Hamilton, wherein the president, recorder, and trustees of the town of Cincinnati are complainants, and Joel Williams is defendant.

HAMILTON COUNTY, ss.

James Finley and David Zeegler, Esquires, having made application to Luke Foster and Michael Jones, judges of the court of common pleas, to perpetuate the testimony of Robert Patterson, Melan Baker, Daniel C. Cooper, William McMillin, John R. Mills, and Israel Ludlow; these are therefore to notify you to attend at the house of Griffin Yeatman, in Cincinnati, on Tuesday next, then and there to hear the evidence of the aforesaid persons concerning the public common in the town of Cincinnati. Given under my hand at Cincinnati, the 21st day of December, 1803.

MICHAEL JONES.
LUKE FOSTER.

To JOEL WILLIAMS and JOHN C. SYMMES, Esquires.

STATE OF OHIO, HAMILTON COUNTY, ss.

Personally appeared before me, John Mahard, Esq., one of the justices assigned to keep the peace within the county aforesaid, P. P. Stuart, who being duly sworn according to law, deposeth and saith, that Wednesday, the 21st inst., he called on the honorable Judge Luke Foster, and requested his attendance at the house of Griffin Yeatman, on Tuesday next, to perpetuate testimony, &c., as recited within, and that on Tuesday the 22d, he handed into the hands of Joel Williams a true copy of the within, agreeably to the law in such case made and provided. In witness whereof, I have hereunto set my hand and seal, at Cincinnati, the 24th day of December, 1803.

P. P. STUART.

Sworn and subscribed before me, the day and year above written.

JOHN MAHARD.

STATE OF OHIO, HAMILTON COUNTY, ss.

Before me, John Mahard, one of the justices in and for the said county, personally appeared Thomas Thompson, who being duly sworn according to law, deposeth and saith, that this day he, this deponent, did deliver a copy of the within to John Cleves Symmes, Esquire.

THOS. THOMPSON.

Sworn and subscribed before me, the 26th of December, 1803.

JOHN MAHARD.

Endorsed as follows, to wit: Received in the office, the 27th December, 1803, and recorded in book D, No. 1, page 73, for Hamilton county, Ohio Sta e.

GRIFFIN YEATMAN, *D. Recorder.*

TATE OF NEW JERSEY, BOROUGH OF ELIZABETH, ss.

The deposition of Matthias Denman, of Springfield, in the county of Essex, and State of New Jersey, taken before the subscriber, mayor of the borough of Elizabeth, in the said State, at his chambers at Elizabethtown, in the borough aforesaid, on the twelfth day of August, in the year of our Lord one thousand eight hundred and six, pursuant to a rule of the Supreme Court of the State of Ohio, in a cause in chancery depending in the said State, wherein the president, recorder, and trustees of the town of Cincinnati are complainants, and Joel Williams defendant. The said Matthias Denman personally came before me, on the day and at the place above named, and being duly sworn according to law, on his oath says, he was one of the proprietors of the town of Cincinnati, and contracted with, and purchased of, John C. Symmes, the lands whereon the town of Cincinnati is situated, which was a section and fraction; that the purchase was made by this deponent of the said John C. Symmes, in the year one thousand seven hundred and eighty-eight, to the best of this deponent's belief and recollection. That this deponent, before the laying out of the town of Cincinnati, sold one-third of the town tract to Israel Ludlow, now deceased, and one other third to one Robert Patterson; that Israel Ludlow was appointed by this deponent as agent, as far as this deponent was interested to lay out the town of Cincinnati, and that he acted as the agent of this deponent and Robert Patterson, and as proprietor himself, in laying out the said town, and that the town was laid out in the year of our Lord one thousand seven hundred and eighty-nine, and, as this deponent thinks, Robert Patterson assisted Ludlow in laying out the town, and was on the ground when the town was laid out; the plan and proceedings relating to the same were by said Israel Ludlow and Robert Patterson submitted to this *department*, and after consideration were by him approved of, sanctioned, and confirmed; that the ground lying between Front street and the Ohio river, and extending from Main street to the artificer's yard, was set apart as a common for the use of the town, and given as a common for the common benefit of the town, as a common for ever, reserving only the right of a ferry.

That, some years after the laying out of the town, this deponent sold his interest in his third to Joel Williams, the defendant: that the said Joel Williams was, by the purchase, to stand in this deponent's stead, acquiring the rights of this deponent only, and subject to all privileges, benefits, or interests, in the town, and that the said Joel Williams knew, at the time of the purchase, that Israel Ludlow and Robert Patterson were proprietors with this deponent, each of a third part of the lands before mentioned, and, as this deponent thinks, was informed, or at any rate must have known, that the before mentioned part of the said land had been given for the benefit of the town as a common for ever, long before he purchased of this deponent, as he was one of the first settlers in the town: that this deponent and his then co-proprietors, Israel Ludlow and Robert Patterson, were induced to give the said land for a common, not only for the convenience of the inhabitants of the town, but upon a supposition that it would enable them to sell lots advantageously. This deponent further saith, that he never informed the said Joel Williams, at the time he sold him his one-third of the land, nor at any time before or since, that there was any balance on the town tract due to John C. Symmes, and that the said John C. Symmes, since the original purchase from him of the said section and fraction where

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the said town of Cincinnati is built, never pretended to this deponent there was any such balance, although this deponent has often seen him, and dealt considerably with him, since that time; and this deponent further saith, that five hundred and fifty dollars was the consideration money for right and interest of this deponent to the one-third of the town tract sold as aforesaid to the said Joel Williams, and for that only. And this deponent further saith, that the said Israel Ludlow, Robert Patterson, and this deponent, were sole proprietors of the said section and fraction of a section of land aforesaid, until this deponent conveyed his right and title to his one-third to the said Joel Williams; and further this deponent saith not.

MATTHIAS DENMAN.

Sworn before me, the day and year aforesaid.

CALEB HALSTEAD, jun.,
Mayor of the borough of Elizabeth.

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of Daniel C. Cooper, of the county of Montgomery, in the State aforesaid, taken at Cincinnati, the 27th day of December, 1803, before Michael Jones and Luke Foster, two of the associate judges of the court of common pleas in and for said county, for the purpose of perpetuating the testimony of the said Daniel C. Cooper, respecting a tract of land in the town of Cincinnati, commonly called the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river, which said tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who has been duly notified of the time and place of taking this deposition. The said Daniel C. Cooper, being duly sworn as the law directs, doth depose and say, that some time in the spring, in the year 1791, this deponent came to Cincinnati, in company with Israel Ludlow, one of the proprietors of the said town, who informed this deponent that if he would survey off lots when the settlers in the town called on him, he might make choice of any vacant lot in the town for his services; that this deponent examined the lots, and requested the said Israel Ludlow to permit this deponent to lay one off in front of the lots where Col. Gibson formerly resided; that the said Israel Ludlow informed this deponent that he could not do that, as that ground was a common for the use of the town.

D. C. COOPER.

Sworn and subscribed before us, the day and year aforesaid.

MICHAEL JONES.
LUKE FOSTER.

Endorsed: Received in the office 27th Dec. 1803, and recorded in book D, No. 1, pages 75 and 6. State of Ohio, Hamilton county.

GRIFFIN YEATMAN,
D. Recorder.

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that on the seventh day of October, in the year of our Lord one thousand eight hundred and three, before us, Michael Jones and Luke Foster, Esquires, two of the associate judges of the court of common pleas within and for the first circuit, came personally William McMillin,

of Cincinnati, who on oath, administered according to law, deposeth and saith, that he, the deponent, was one of those who formed the settlement of Cincinnati on the twenty-eighth day of December, in the year of our Lord one thousand seven hundred and eighty-eight; that a few days afterwards a plan of the town of Cincinnati was draughted by Israel Ludlow, with the advice and assent of Robert Patterson, both of whom were then considered as joint proprietors, with Matthias Denman, of New Jersey, and the said Israel Ludlow then acted as agent for the said Denman; agreeably to the aforesaid plan, the town was laid off, and then in part surveyed, excepting that part which lies south of Front street, and west of Main street, which was not laid until some time afterwards, and agreeably to the aforesaid plat and survey was the town lots built upon and improved, without any alteration from that time since, to this deponent's knowledge; that at the time of submitting the aforesaid plan to the people who came to farm the settlement, which was early in January, one thousand seven hundred and eighty-nine, the aforesaid Robert Patterson and Israel Ludlow did declare, that all the ground lying between the front of the lots which lie between Vatier's and Gibson's corner, that is to say, all south of the two upper squares or Front street, should be a perpetual common, for the use of the inhabitants of said town, provided, however, that no commoner, in virtue of his right of common, should be entitled to a right of keeping a ferry on the Ohio, and oftentimes afterwards, he, this deponent, heard the said Ludlow and Patterson declare the same to be a common, which the proprietors had no right to sell, or exclusively to occupy; that as late probably as the year one thousand seven hundred and ninety-three, the aforesaid Robert Patterson and this deponent being in conversation on this subject of common, the said Patterson requested this deponent to prepare a deed of covenant, for the further assuring of the aforesaid common, for him, the said Robert, to execute. This deponent proceeded to draw such instrument, and presented it to the said Robert, who then remarked, that as the aforesaid Ludlow was absent, it might be considered indelicate in him to sign alone, but as Mr. Ludlow was expected to return in a few weeks or months, or about a certain time then mentioned, the said Patterson would defer executing it until the time of his next coming over, which would be immediately after he heard of Mr. Ludlow's return. Before Mr. Ludlow's return, well as this deponent can recollect, the said Robert Patterson was reported to have sold his right of property in the said town of Cincinnati to one Samuel Freeman, and the deed of covenant hath not been executed, to this deponent's knowledge. And further this deponent saith, that some time in the year 1792, Joel Williams, of Cincinnati, and this deponent, were conversing on the subject of the aforesaid common, and query was made, whether, as the proprietors had not bound themselves by some instrument of writing to secure the aforesaid common to the inhabitants of the town, they might be tempted to evade their verbal promise, and yet sell it; upon which conversation the said Joel Williams, who seemed to be interested in supporting the common in behalf of the inhabitants, enjoined it on this deponent to keep in mind the declaration of the proprietors on that subject.

WILLIAM McMILLIN.

Sworn to and subscribed before us, the day and year aforesaid.

MICHAEL JONES.
LUKE FOSTER.

STATE OF OHIO, HAMILTON COUNTY, ss. 423.

Personally appeared before us, Francis Dunlevy, Esq., president judge, and James Silver, Esq., associate judge, in and for the county of Hamilton aforesaid, Luke Foster, and being duly sworn, deposeth and saith, that, at the time of drawing the within deposition by Mr. William McMillan, at the house then occupied by Judge Jones, Mr. Joel Williams was present, and urged by Judge Jones and myself to continue until the deposition should be taken and subscribed, but said Joel refused, and withdrawing, replied that he, the said Joel, was notified to appear at another place, on another day, and would attend strictly to the notification, but would not stay to hear Mr. McMillan sworn to this within deposition, or hear the same read; and further the deponent saith not. But being interrogated by Arthur St. Clair, Esq., whether or not the said Joel Williams asked several questions of the deponent, Mr. McMillan, relative to the cause to which the deposition alludes, the deponent replieth and further saith, that very considerable conversation on the subject, passed between the said Mr. Williams and said McMillan, took place at that time, but that the memory of the deponent will not permit to particularize.

LUKE FOSTER.

Sworn and subscribed, the 7th day of May, A. D. 1804.

FRANCIS DUNLAVY
JAMES SILVER.

Received 6th, and recorded the 13th July, 1804, in book D, No. 1, pages 104 and 105.

JOHN W. BROWN, *Recorder Hamilton co.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of Ephraim Kibby, of Warren county, taken at Cincinnati, the 3d day of May, 1804, before James Silver and Luke Foster, judges of the court of common pleas in and for said county, for the purpose of perpetuating the testimony of the said Ephraim Kibby, respecting a certain tract of land in the said town of Cincinnati, commonly called the common, bounded by the eastern boundary of said town, by Front street, by Main street, and by the Ohio river, deposeth and saith, that, some time in the year 1789, Israel Ludlow and Robert Patterson, Esqs., with many others, met at what is now called Cincinnati, for the purpose of settling said town; they were thought the proprietors of said town, together with Matthias Denman. Observing a fraction in front as aforesaid, I asked what was to be done with it; the said Israel Ludlow and Robert Patterson said it should be for public use, and that it should never be put for any other use than what the citizens or people pleased.

Question 1st. Did you ever hear Matthias Denman acknowledge that the land lying between Front street and the Ohio river, and extending from Main street to Charles Vatier's corner, was given by the proprietors of the town as a common for the benefit of the owners thereof?

Answer. I did; first in the State of New Jersey, in the year 1790, and afterwards in the town of Cincinnati.

Question by Joel Williams. 1st. Did you not understand from the original proprietors of the town of Cincinnati, or some of them, that one section only had been located by Matthias Denman, of New Jersey, in the Miami purchase, nearly opposite the mouth of Licking river?

Answer. I know Mr. Denman located several sections in the Miami purchase, one of which was as nearly opposite the mouth of Licking as could be.

2d. Do you know when the fraction of land, appertaining to the town section south of the same, and adjoining the river Ohio, was located, or what part or proportion thereof?

Answer. I do not.

3d. Do you know whether all the proprietors of the town of Cincinnati agreed to give any land as a common, and if any, how much, at or after the purchase or location of the said town fraction?

Answer. I heard Messrs. Denman, Ludlow, and Patterson say that all the ground between Front street, Main street, and the Ohio, and the eastern boundary of the town now called Cincinnati, but then called Losantiville, was a common for the use of the public, and that a number of lots, I believe eight, was given for court-house and jail; but, until this day, I never knew the town, of what is called Cincinnati, was on a small or large fraction; and it was understood that the location made by Mr. Denman would extend to the Ohio. And further this deponent saith not.

EPHRAIM KIBBY.

Sworn and subscribed, the third day of May, A. D. 1804.

JAMES SILVER.
LUKE FOSTER.

Recorded 5th May, 1804, in book D, No. 1, pages 94 and 95.

JOHN W. BROWN, *Recorder H. C.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of Israel Ludlow, Esquire, of Cincinnati, taken at Cincinnati, the 27th day of December, 1803, before Michael Jones and Luke Foster, judges of the court of common pleas in and for said county, for the purpose of perpetuating the testimony of the said Israel Ludlow, respecting a tract of land in the said town of Cincinnati, commonly called the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river, which said tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who has been duly notified of the time and place of taking this deposition, the said Israel Ludlow, being duly sworn, as the law directs, doth depose and say, that, in the fall of 1788, the deponent became, by purchase, from Matthias Denman, a proprietor, in the proportion of one-third of the section and fraction on which the town of Cincinnati is laid out; that in the month of January, 1789, this deponent, together with Robert Patterson, Esquire, of Kentucky, who was also a proprietor, in the proportion of one-third of said section and fraction, landed on said ground, with a number of others, to lay out the town of Cincinnati, and form a settlement thereon; that this deponent was then the agent of said Matthew Denman; that he, as such, and acting for himself, together with Robert Patterson, Esq., did, for the encouragement of the settlement, agree to make a donation to the first thirty settlers, one town lot and one out lot to each settler, in said town of Cincinnati; that this deponent, and said Robert Patterson, agreed on the plan of said town, and surveyed such part of it as was necessary to accommodate the first thirty settlers; that they extended the front of the town as far down as Main street; that it was publicly declared to the said first thirty settlers, that the

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ground in front of Front street, should be and remain a common for the use of the said town; that the lots thus laid out on said Front street were called front lots, and given as such to said settlers; and that this deponent never intended to lay out or appropriate any part of said common for houses or any other uses, but for the general use and good of the town, as low down as said Main street. And this deponent further saith, that the tract of land bounded on the east by the eastern boundary of said fractional section, on which a part of said town as laid out, north by Front street, west by Main street, and south by the Ohio river, was set apart, and given by the proprietors of said town, as a common, for ever, for the use and benefit of the citizens of said town, reserving to the proprietors the right of a ferry on the Ohio, in said common.

ISRAEL LUDLOW.

Sworn and subscribed before us, the day and year aforesaid.

MICHAEL JONES.
LUKE FOSTER.

Endorsed, Received in the office the 27th December, 1803, and recorded in book D, No. 1, page 77. State of Ohio, Hamilton county.

GRIFFIN YEATMAN, *D. Recorder.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of Melyn Baker, of the said county, taken at Cincinnati, on the 27th day of December, A. Domini 1803, before Michael Jones and Luke Foster, two of the associate judges in and for said county, for the purpose of perpetuating the testimony of the said Melyn Baker, respecting a tract of land in the town of Cincinnati, commonly denominated the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river; which trac of land is claimed by Joel Williams, a citizen and proprietor of said town, who hath been duly notified of the time and place of taking this deposition; the said Melyn Baker, being duly sworn, doth depose and say, that, in the month of October, A. Domini, 1790, he arrived at the town of Cincinnati, and that, some time after his arrival, he had a conversation with Mr. Joel Williams, a citizen of said town, and now one of the proprietors of it, respecting the town generally, and particularly respecting the land lying between Front street and the Ohio river, and extending from the eastern boundary of the town to Main street, in which conversation he, the said Joel Williams, informed him that the said tract of land was given by the proprietors for the sole use and benefit of the inhabitants of the said town for ever; that it was not to be occupied for private purposes, but to be preserved for dockyards, storehouses, &c., and that the inhabitants of the said town had the right, when they pleased, to remove from the said land all incumbrances whatever. And this deponent further saith, that he occupied a small enclosure on the said land under Isaac Freeman, which hath since been removed, and that the said Joel Williams then stated to this deponent that the citizens of the town would have the right of removing the said enclosure whenever they see proper, as the said land had been given by the proprietors as a common for the use of the town; and the said Joel Williams then expressed his approbation of the said donation, and spoke of it as being necessary and high-

ly useful to the town, and spoke of the cove or basin in front of Mr. Yeatman's house as being well calculated for building boats; and this deponent always understood from those who conversed on the subject, that the ground described was given as a common for the benefit of the town.

MELYN BAKER.

Melyn Baker: Sworn and subscribed to the preceding deposition before us, the day and year aforesaid.

MICHAEL JONES.
LUKE FOSTER.

Endorsed, Received in the office the 27th December, 1803, and recorded in book D, No. 1, page 75. Hamilton county, State of Ohio.

GRIFFIN YEATMAN.

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of James Silver, of the State and county aforesaid, at Cincinnati, in the said county, on the third day of May, A. D. 1804, before Francis Dunlevy, Esq., the presiding judge of the court of common pleas for the county aforesaid, and Luke Foster, one of the associate judges for the county aforesaid, for the purpose of perpetuating the testimony of the said James Silver, respecting a tract of land in the town of Cincinnati, commonly denominated the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river, which tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who hath been duly notified of the time and place of taking the deposition, who, being sworn according to law, deposeth and saith, that, in the year one thousand seven hundred and ninety-five, as near as this deponent can recollect, he heard Israel Ludlow, Esq., of the county aforesaid, say he was a joint partner and holder of the land whereon the town of Cincinnati stands, in said county, and was also agent for the other proprietors to sell the said land in lots, and give a certain fraction of land lying between Front street, in said town, and the river Ohio, in front of the lots owned by William McMillin, Esq. and Mr. Henry Reed; and that he, the said Ludlow, did give the said fraction of land for a public common to the inhabitants of said town.

Question by Joel Williams. 1st. Who was the original proprietor of town of Cincinnati?

Answer. I do not know.

2d. At what time was the town fraction located? and what quantity of acres?

A. I know not.

3d. Do you know whether Israel Ludlow was a proprietor, and in what manner he became such?

A. I do not know in what manner, but was reputed as such.

4th. Of what extent was the fraction of land along the Ohio, between Front street and the said river, opposite the lots of William McMillen and Henry Reed, which Israel Ludlow should have said was to be given as a common to the inhabitants of said town?

A. I understood by Israel Ludlow the fraction extended from the southeast corner of said Ludlow's lot, adjoining from the southeast corner of said Ludlow's lot, adjoining the lot whereon Joel Williams's dwelling-house was

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built, to the southwest corner of the artificer's yard, across the street from the dwelling-house of Charles Vatier, on Front street.

5th. Do you know by what authority Mr. Ludlow proposed to make the above donation of a common?

A. I do not. And further this deponent saith not.

JAMES SILVER.

Sworn and subscribed, the third day of May, A. D. 1804.

FRANCIS DUNLAVY, *P. C. C. P.*
LUKE FOSTER.

Recorded 5th May, 1804, in book D, No. 1, page 92.

JOHN W. BROWN, *Recorder Ham. co.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, the deposition of Robert Patterson, a citizen of the State of Kentucky, taken at Cincinnati, in the county of Hamilton, on the 27th day of December, A. D. 1803, before Michael Jones and Luke Foster, Esqrs. two of the associated judges of the court of common pleas in and for the county of Hamilton, for the purpose of perpetuating the testimony of the said Robert Patterson, respecting a tract of land in the said town of Cincinnati, commonly denominated the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the Ohio river, which tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who hath been duly notified of the time and place of taking this deposition, who, being sworn according to law, deposeth and saith, that, in the year seventeen hundred and eighty-eight, he, this deponent, purchased of Matthias Denman one equal undivided third part of the section and fraction on which the town of Cincinnati is laid out; that, in the month of January, seventeen hundred and eighty-nine, he, the deponent, together with Israel Ludlow, who was also a proprietor in the proportion of one-third of said land, and agent of the said Matthias Denman, landed on the ground, for the purpose of laying off the town of Cincinnati, and proceeded to lay off the said town, as the same hath been since recorded by the said Israel Ludlow on the records of Hamilton county; and for the accommodation of the first thirty settlers, to whom was promised a town and out-lot each, they laid out the front of said town as far down or westwardly as Main street, and assigned, by draught to each settler, his particular lot or donation; and that the ground in front of Front street was declared, at that time, a public common for the use of the citizens of the said town, excepting and reserving only, for the benefit of the proprietors, the privilege of establishing a ferry on the bank of the Ohio on said common, which common embraces all the ground bounded east by the eastern boundary of the said fractional section on which part of said town is situate, north by Front street, west by Main street, and south by the Ohio river; and this deponent further saith, that, in consequence of the above tract of land being given as a public common, he considered the lots in the said town as more valuable than they otherwise would have been, and believes that they were considered so by the settlers; and that the said lots, in consequence of that donation, sold for a higher price, and that the purchasers received an advantage from the said common sufficient to indemnify them for the advance price paid by them for the respective lots.

Question by Jacob Burnet, Esq. Who were the original proprietors of the town of Cincinnati?

Answer. An agreement was made between Matthias Denman, John Fielson, and myself, to lay out a town on the ground where Cincinnati now stands. In about one month after this agreement was made, and before any steps had been taken for laying out the said town, the said Fielson was killed; after the death of the said Fielson, Matthias Denman, with the approbation of myself, took in Israel Ludlow as a partner in the place of the said John Filson, who had made no payment towards the land, and the said Matthias Denman, Israel Ludlow, and myself, are the original proprietors, and proceeded to lay off the said town after the death of the said Filson. I was acquainted with the brother of the said Filson, who was heir at law to the said Filson, and he informed me, that, as the said John Filson had paid nothing for the said land, he did not set up any claim to the said town, or consider himself as having any interest or concern therein.

Question by Jacob Burnet, Esq. Was Joel Williams one of the original proprietors of the town?

Answer. J. Williams was not one of the original proprietors.

Question by Mr. Burnet. Was it understood by you and Samuel Freeman, at the time he purchased from you, that the land above described, between Front street and the Ohio river, had been given as a public common for the use of the town?

Answer. I understood it, and I believe Freeman did also, that he was to pay me eight dollars per acre for it, as the value of the unsold lots was enhanced in consequence of that donation.

Question by Mr. Burnet. Have you examined both the plans on record; the one recorded by Joel Williams, the other by Israel Ludlow? and which of them is the original plan?

Answer. I have examined both, and believe the one recorded by Israel Ludlow to be agreeable to the original plan.

Question by Mr. Burnet. Whether Samuel Freeman has not refused to pay you for the above described land set apart as a common since the contract with him, the said Samuel?

Answer. He has refused to pay me, although requested; but I did agree to give up any claim for the common if he would pay me the residue agreeably to contract.

R. PATTERSON.

Sworn and subscribed before us, the day and year aforesaid.

MICHAEL JONES.
LUKE FOSTER.

Endorsed, Received in the office the 27th December, 1803, and recorded in book D, No. 1, pages 73, '4, and '5. State of Ohio, Ham. co.

GRIFFIN YEATMAN, *D. Recorder.*

STATE OF OHIO, HAMILTON COUNTY, ss.

Be it remembered, that the deposition of John R. Mills, Esq., of Springfield, in county aforesaid, taken at Cincinnati, the 27th day of December, 1803, before Michael Jones and Luke Foster, judges of the court of common pleas in and for said county, for the purpose of perpetuating the testimony of the said John R. Mills, respecting a tract of land in the said town of Cincinnati, commonly called the common, bounded by the eastern boundary of the said town, by Front street, by Main street, and by the

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Ohio river, which said tract of land is claimed by Joel Williams, a citizen and proprietor of said town, who has been duly notified of the time and place of taking this deposition. The said John R. Mills, being duly sworn, as the law directs, doth depose and say, that, in the spring, after the town of Cincinnati was settled, he arrived at the said town; and that the same short time after his arrival, he saw Col. Robert Patterson, one of the proprietors of the said town, and stated to him a claim that he had for a lot in the said town; the said Robert Patterson there informed this deponent that the donation lots were all taken up; this deponent then proposed to take a lot between Front street and the river Ohio; upon which the said Robert Patterson told the deponent that he could not have a lot on that ground, as it had been given by the proprietors as a common for the use and benefit of the citizens of the town. And this deponent further saith that he hath heard Israel Ludlow and Matthias Denman, who were original proprietors of the said town, acknowledge and assert that the land between Front street and the Ohio river, and extending as far southwest as Main street, had been set apart by the proprietors, and given as a common for the use of the town; and this deponent hath always understood and considered the said land as a public common.

JOHN R. MILLS.

Sworn and subscribed before us, the day and year aforesaid.

MICHAEL JONES.
LUKE FOSTER.

Endorsed, received in the office the 27th December, 1803, and recorded in book D, No. 1, page 76. State of Ohio, Ham. Co.

GRIFFIN YEATMAN, *D. Recorder.*

The PRESIDENT, RECORDER, and TRUSTEES of the town of Cincinnati, *vs.* JOEL WILLIAMS. } *On the equity side of the Supreme Court of the State of Ohio, sitting in the county of Hamilton.*

This cause coming on before the honorable the Judges of the Supreme Court sitting as a court in chancery in the county of Hamilton, in the term November, in the year of our Lord eighteen hundred and seven, in the presence of the counsel on both sides. The substance of the complainants' petition appears to be, that, in the year of our Lord 1787, John C. Symmes, in and by a certain publication, bearing date on or about the 26th November, A. D. 1787, addressed to the respectable public, among other things did set forth and declare that the honorable Congress, by their act of the 3d October, 1787, authorized the Treasury board to enter into a contract with him for a certain tract of land, beginning at the mouth of the Great Miami river; thence running up the Ohio, to the mouth of the Little Miami river, to a place where a due west line to be continued from the western termination of the northern boundary line of the grant to Messrs. Sargeant, Cutler, &c. should intersect the said Little Miami river; thence due west, continuing the said western line to the place where the said line should intersect the main branch of the Great Miami river; thence down the Great Miami river to the place of beginning, on the terms and conditions therein mentioned: by which publication the said John C. Symmes did make known the schemes adopted by him for the sale and settlement of said lands, and did invite persons to become purchasers under him, proposing to issue land

warrants to the purchasers, authorizing them, their heirs or assigns, to locate the same on such unlocated lands as they might elect, for which patents should issue to the said purchasers. That, some time in about the month of January, A. D. 1788, one Matthias Denman purchased and entered the 17th fractional section, in the fourth fractional range of townships, on the Ohio river, on which the town of Cincinnati is in part laid out and built, commonly called the town fraction, and also the entire section numbered 18, adjoining thereto, commonly called the town section; and that after the said purchase by the said Matthias, and some time within the said year 1788, one Robert Patterson and one Israel Ludlow severally purchased from the said Matthias one-third part of the said section, and fractional section, numbered as above, and that shortly after the said Matthias, Robert, and Israel entered into an agreement for laying out and establishing a town on the said lands, and that, in pursuance of said agreement, some time in or about the month of January, A. D. 1789, the said Robert and Israel landed on the ground where the town of Cincinnati now stands; and the said Robert and Israel, who acted in the joint capacity of a proprietor, and agent for the said Matthias, proceeded to lay out the town of Cincinnati, in manner and form, as the same hath since been recorded by the said Israel, as one of the original proprietors; and for the accommodation of the first thirty settlers in the said town, the proprietors laid out, in the first instance, the front of said town as far westwardly as Main street, and, as an inducement to persons to become settlers and purchasers in the said town, and for the future convenience of the citizens, and as an ornament to the said town, the proprietors then set apart all the ground lying between Front street and the Ohio river, extending from the eastern boundary of the said town fraction number 17, to Main street, and then and there gave, and publicly declared the said ground to be a common for the use of the citizens of the said town for ever, reserving to themselves only the right of establishing a ferry on the bank of the Ohio on the said common, and that the tract of land bounded northwardly by Front street, eastwardly by the eastern boundary of the town fraction No. 17, southwardly by the Ohio, and westwardly by Main street, was then and there received, and hath from that time been wholly claimed, and, until the trespass in the said petition set forth, hath been held and used as a public common for the benefit and convenience of the citizens of the said town, and that after the said town had been laid out, and the ground above described given by the proprietors thereof, for the purpose of a common, (to wit,) in or about the month of September, A. D. 1794, letters patent were granted by the President of the United States to the said John C. Symmes, and his associates, for a part of the land described in the before mentioned publication, including the said town, whereby the proprietors and settlers thereof became entitled to receive conveyances in severalty for their lots, commons, and public grounds, being associates of the said John in the proportion of their said claims; that, after these transactions, on or about the twenty-sixth of November, seventeen hundred and ninety-four, one Samuel Freeman purchased of the said Robert Patterson his remaining interest as a proprietor in the said town; and that, on or about the fourth of March, A. D. seventeen hundred and ninety-five, Joel Williams, the above defendant, purchased of the said Matthias Denman his remaining interest in the said town; and that the said Samuel and Joel, at the times of their respective purchases, well knowing the sales and donations that have been made by the original proprietor, and especially knowing that all the land

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lying between Front street and the Ohio river, and extending from the eastern boundary of the said town fraction to Main street, had been set apart and given, by the original proprietors, as a public common for the accommodation of the citizens of the town; and that the said Joel well knew that the said proprietors had received a valuable consideration from the purchasers and settlers in said town for the ground so set apart as a common, by the increased price of lots sold in consequence of the advantages to be derived from the said common. That, on the original map of said town, the whole of the ground, before described and claimed as a common, was left vacant, no lots or streets being laid out on the same, but that all the lots and streets numbered and laid off on the said map terminated at the boundary of the said common; which original map, so containing the said common, was in the possession of the said Joel Williams several years before he pretended to claim any part of said common as private property; and that the said Joel Williams, several years before he became a proprietor under Matthias Denman, frequently conversed on the subject of the said common, describing its advantage to the town, and expressing his fears lest the proprietor should attempt, at some future day, to reclaim it for private uses; that after the said Samuel and Joel had become proprietors as aforesaid, it was agreed between them and the said Israel, as proprietors, and the said John C. Symmes, in whom the fee was vested, that the fee of the said town should remain in the said John in trust, and that all deeds for town lots should be executed by the said John C. Symmes to the purchaser or purchasers, on their producing to him certificates signed by the proprietors of the town, or any two of them, setting forth that the persons producing the same were entitled to deeds, and that deeds should be issued on no other authority; that the said defendant, in order to deprive the citizens of the said town of the benefits and advantages of the said common, hath procured from the said John C. Symmes a deed of conveyance thereof, in his own name, bearing date on or about the fourteenth day of February, A. D. eighteen hundred; and that although the said defendant, at the time of obtaining the said deed, was, and still is, one of the proprietors of said town, and as such, in equity and good conscience, bound to prosecute for, and secure to the citizens of the said town, the said tract of land as a common; and that although the said defendant well knew, before and at the time of procuring the said deed, that the said land had been given by the proprietors to the citizens of the said town as a common, and that it had been held and enjoyed as such from the time the said town was laid out until the day of the date of the said deed, given by the said John C. Symmes as aforesaid, yet that the said defendant, under color of his said deed, doth claim the said ground as his right, hath taken possession of the same, and erected divers buildings, enclosures, and nuisances thereon, denying the right of the right of said town, or the citizens thereof, to the same, or any part thereof; and that the said defendant refused to give effect to the aforesaid grant of the original proprietors, by conveying the said ground for the purposes intended by the said original proprietors, or to hold it in trust for the objects aforesaid, but hath proceeded to lay off the same into lots, and to appropriate them to private purposes, &c.

Therefore, that the said defendant, holding the fee of the said common in himself, and pretending to claim it in his own right, may be decreed to execute the agreement of the original proprietors of the said town of Cincinnati, by conveying the lands given as aforesaid for the purposes of a

common, (reserving only the right of a ferry on the bank of the Ohio river,) to the complainants, or such other persons as might be nominated trustees for the purpose aforesaid; and that the citizens of the said town might be permitted to use and enjoy the said common, and the nuisances erected thereon might be removed, and the enclosures thereon be thrown open, and all further nuisances enjoined; and that the complainants might have such other and further relief as should be agreeable to equity, and as the court should think fit, &c., and to be relieved in the scope of the complainants' petition: Whereto the counsel for the defendant alleged, that, previous to the twenty-fifth day of August, A. D. seventeen hundred and eighty-eight, the above named Matthias Denman purchased a land warrant of one Joseph Halsey, under the said John C. Symmes, for six hundred and forty acres of land, to be laid out within the tract granted by the Congress of the United States to the said John C. Symmes, in manner as set forth in the aforesaid petition; which said warrant was, by agreement of the said parties, to be located as nearly opposite the mouth of Licking river as an entire section could be found, after such land should be divided into townships and sections; and, in pursuance of said agreement, said warrant was laid on section No. 18, as described in the petition, on which the town of Cincinnati in part stands; and that, after the purchase of the said section, the said Denman entered into a contract with Robert Patterson and John Filson to lay out a town on the premises, and to establish a ferry thereon, and that Israel Ludlow was appointed their agent for that purpose; and that the proprietors arrived on the ground in September seventeen hundred and eighty-eight, and shortly after proceeded to lay off said town in part. That the said Ludlow was not a proprietor of said town, but merely an agent in the estimation of the defendant. That the town was laid out before the Miami purchase was surveyed into sections, townships, and ranges; that the lots bordering southwardly on Front street, and westwardly by Main street, were first laid, and that certain lots bordering on the ground claimed as a common were donations to the first settlers, and that the land claimed as a common was reserved by or for the proprietors until the Miami purchase should be surveyed into ranges, townships, and sections, when it would be more fully ascertained whether the said reservation would fall within the entire section, in which case it was to be reserved for the use and benefit of the proprietors, which was declared by the said Ludlow, acting as agent for the proprietors, as the defendant had heard and believed; and that the defendant never knew or believed that the land claimed as a common had been reserved for that purpose. That, on or about the fourth of April, A. D. seventeen hundred and ninety-one, one Matthias Denman purchased and entered the fraction No. seventeen, mentioned in the petition aforesaid. That, on or about the twenty-sixth of November, A. D. seventeen hundred and ninety-four, the said Robert Patterson sold to the before named Samuel Freeman his right and title as a proprietor in the said town; and that, on or about the seventh day of November, A. D. eighteen hundred and three, the said Samuel did sell and convey to the defendant his right, title, and interest as a proprietor in said town. That, on or about the fourth day of March, A. D. seventeen hundred and ninety-five, the defendant purchased of Mathias Denman, for the consideration of five hundred and fifty dollars, the one equal undivided third part of all that certain tract of land in the then northwestern territory, bounded on the west by lands known by the name of Dayton's sections, on the north by lands known by the name

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of Jas. Henry's section, on the east by Judge Symmes's section, and on the south by the Ohio river, including the section and fraction above described, on which the town of Cincinnati now stands, as described in the petition. That the defendant, having heard that the land claimed as a common by the complainants had been reserved, in manner as before stated, by the proprietors, did at several times converse with divers persons, citizens of said town, respecting said land claimed as a common, requesting to procure, or endeavour to procure, from the proprietors, a deed, or some or memorandum, in writing, amounting to a conveyance of the said land for the use and purposes mentioned in the petition. That the defendant, having been told that the lands aforesaid had been reserved for future use, purchased as above described. That, at the time the defendant purchased of the said Denman, in addition to the consideration above mentioned, he agreed to pay to John C. Symmes a balance due from the said Denman to the said Symmes, on the original agreement of the said Denman with the said Symmes for the purchase of the lands aforesaid. And that, on or about the fourteenth day of February, A. D. eighteen hundred, he paid to the said John C. Symmes the said balance so assumed, and then and there received from the said John C. Symmes a deed of conveyance of a part of the said fraction seventeen; that the said defendant had proceeded to lay out the lands above described as a common, into lots, enclosed a part, and erected buildings on the same.

Wherefore, and upon debate of the matter, and hearing the deeds conveying the premises in question to the defendant, and other documents relating thereto, and the proofs taken in this cause read, and having duly examined the same, and what was alleged by the counsel on both sides, the court declare that they do think fit, and do order and decree, and accordingly it is ordered, and adjudged, and decreed, that the said Joel Williams, the defendant, do execute and deliver, on or before the first day of March next, which will be in the year of our Lord eighteen hundred and eight, to the president, recorder, and trustees of the town of Cincinnati, and their successors, a good and sufficient deed, conveying to them in fee simple all the right and title derived by the said Joel from the deed executed to him by John C. Symmes, on or about the fourteenth day of February, A. D. eighteen hundred, of, in, and to the tract or fraction of land in the said town of Cincinnati, bounded northwardly by Front street, eastwardly by the Ohio river, and westwardly by Main street, in trust for the inhabitants of Cincinnati, to be used as a common for ever. Reserving, however, to the said Joel Williams and his heirs the exclusive right of a ferry opposite to, and of a landing for that purpose on, the premises; and reserving, under the conditions hereinafter mentioned, the use of the brick house erected by the said Joel on the premises, together with fifty feet in front, commencing at the northwest corner of said house, and one hundred feet in rear towards the Ohio river, together with all the buildings and appurtenances that may be on said last described piece of land, for the term of eight years from the day of 1st April next. And it is further ordered and decreed, that the said Joel Williams prostrate and remove all the buildings, fences, and nuisances, of what kind soever, erected on the premises, except such as are contained within the parcel of land last described, on or before the first day of March next, which will be in the year of our Lord eighteen hundred and eight. And the said Joel Williams be, and is for ever prohibited and enjoined from erecting any further buildings, fences, or any

other nuisances, upon any part of the premises. And it is further ordered, adjudged, and decreed, that in case the said Joel Williams shall proceed to erect any further nuisances on the premises, or shall not make, execute, and deliver his deed, as above mentioned, conveying all his right and title to the premises derived from the deed of John C. Symmes, of the date of Feb. 14th, A. D. eighteen hundred, by the first day of March, A. D. eighteen hundred and eight, then, and in such case, the complainants shall be at liberty to take their execution or writ of possession, and that the whole land, claimed in the complainants' bill, shall be liable to be taken and seized in execution in satisfaction of this decree, with all the buildings thereon, and all the appurtenances thereof, without excepting the parcel of land and building above reserved for the defendant's use, for the term of eight years, as above mentioned. And it is further ordered, adjudged, and decreed, that the president, recorder, and trustees of the town of Cincinnati, and their successors in office, upon receiving a legal title to, or seizing the land in question by execution, as above mentioned, shall stand seized thereof in fee simple, to the use of the inhabitants of the said town for a common for ever. Provided, that the interest of any other person or persons, not parties to the complainants' bill, nor claiming under the defendant, shall in nowise be affected by the foregoing decree.

It is further ordered, that the defendant shall pay the costs of this suit; costs taxed $112 41.

SAMUEL HUNTINGTON,
GEORGE TODD,
Judges of Supreme Court.

Whereupon the sheriff was commanded in the following words, to wit:

THE STATE OF OHIO, HAMILTON COUNTY, ss.

To Aaron Goforth, Esq., sheriff of our said county, greeting:

Whereas, the president, recorder, and trustees of the town of Cincinnati lately in our Supreme Court obtained a judgment or decree in chancery, and recovered against Joel Williams, of the town aforesaid, the messuages, tenements, and commons, with the appurtenances as follows, the court declare, that they do think fit, and do order and decree, and accordingly it is ordered, adjudged, and decreed, that the said Joel Williams, the defendant, do make, execute, and deliver, on or before the first day of March next, which will be in the year of our Lord eighteen hundred and eight, to the president, recorder, and trustees of the town of Cincinnati, and their successor, a good and sufficient deed, conveying to them in fee simple all the right and title derived by the said Joel from the deed executed to him by John C. Symmes, on or before the fourteenth day of February, A. D. eighteen hundred, of, in, and to the tract or fraction of land in the said town of Cincinnati, bounded northerly by Front street, easterly by the eastern boundary of the town, southwardly by the Ohio river, and westwardly by Main street, in trust for the inhabitants of Cincinnati, to be used as a common for ever; reserving, however, to the said Joel Williams and his heirs the exclusive right of a ferry opposite to, and of a landing for that purpose on, the premises; and reserving, under the conditions hereinafter mentioned, the use of the brick house erected by the said Joel Williams on the premises, together with fifty feet in front, commencing at the northwest

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corner of said house, and one hundred feet in rear towards the river Ohio, together with all the buildings and appurtenances that may be on said last described piece of land, for the term of eight years from the first day of April next; and it is further ordered and decreed, that the said Joel Williams prostrate and remove all the buildings, fences, nuisances, of what kind soever, erected on the premises, except such as are contained within the parcel of land last described, on or before the first day of March, in the year of our Lord eighteen hundred and eight, and that the said Joel Williams be and is for ever prohibited and enjoined from erecting any further buildings, fences, or other nuisances upon any part of the premises; and it is further ordered, adjudged, and decreed, that in case the said Joel Williams shall proceed to erect any further nuisances on the premises, or shall not make, execute, and deliver his deed, as above mentioned, conveying all his right and title to the premises derived from the deed of John C. Symmes, of the date of February 14th, A. D. eighteen hundred, by the first day of March, eighteen hundred and eight, then, and in such case, the complainants shall be at liberty to take their execution or writ of possession, and that the whole land, claimed and described in the complainants' bill, shall be liable to be taken and seized in execution in satisfaction of this decree, with all the buildings thereon, and appurtenances thereof, without excepting the parcel of land and buildings above reserved for the defendant's use for the term of eight years, as above mentioned. And it is further ordered, adjudged, and decreed, that the president, recorder, and trustees of the town of Cincinnati, and their successors in office, upon receiving a legal title to, or seizing the land in question by execution, as above mentioned, shall stand seized thereof in fee simple to the use of the inhabitants of the said town for a common for ever; that the interest of any person or persons, not parties to the complainants' bill, nor claiming under the defendant, shall in nowise be affected by the foregoing decree. It is further ordered, that the defendant shall pay the costs of this suit, &c.

And wherefore, in our same court, before us, it is considered that the said president, recorder, and trustees of the town of Cincinnati may have their execution of the judgment against the said Joel Williams, according to the force, form, and effect of the recovery aforesaid, as it appears also to us on record, therefore, we command you that you, without delay, cause the said president, recorder, and trustees of the town of Cincinnati, and their successors, to have possession of and in the tenements, with the appurtenances aforesaid. We also command you, that, of the goods and chattels of the said Joel Williams, you cause to be made the costs of this writ, together with your legal fees thereon. How you shall execute this writ, together with all and singular your proceedings thereon, make due return to the court of common pleas at Cincinnati, on the first Tuesday of April next.

Witness, the honorable George Todd, Esq., chief judge of our same court, at Cincinnati, the sixth day of February, A. D. 1810.

JOHN S. GONA, *Clerk.* [SEAL.]

Which execution is afterwards, in pursuance of the command thereon, returned with the following return, endorsed, to wit:

By virtue of the within writ to me directed, I did, on the first day of March last past, cause the president, recorder, and trustees of the town of Cincinnati to have possession of and in the tenements, with the appurte-

nances within mentioned, by peaceably delivering the same to them, and leaving them in the possession thereof, and have made the costs of this writ as within is commanded me.

AARON GOFORTH, *Sheriff.*

Sheriff's fees 82 cents.

STATE OF OHIO, HAMILTON COUNTY, set.

I, Daniel Gano, clerk of the Supreme Court of the State of Ohio in and for said county, do hereby certify the within and foregoing to contain a correct copy of the record of proceedings had in said court in suit of the president, recorder, and trustees of the town of Cincinnati, *vs.* Joel Williams, together with a true copy of the writ of possession issued thereon, with the return of sheriff as endorsed, abstracted from record No. 1, pages 158 to 178, also correct copies of the depositions in said case.

In testimony whereof, I have hereunto set my hand, and affixed the seal of our said court, at Cincinnati, this third day of July, A. D. 1829.

DANIEL GANO, *Clerk.* [SEAL.]

THE STATE OF OHIO, HAMILTON COUNTY—*Court of common pleas.*

The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *ads.* JOHN DOE, ex. dem. Edward White.	*Action of ejectment, 7th circuit court of the United States, Ohio district.*

The above plaintiff, and his attorneys, will take notice that, on the twenty-third day of November, in the year eighteen hundred and twenty-nine, the above defendants will take the depositions of Jacob Burnet and others, before Isaac G. Burnet, Esq., mayor of the city of Cincinnati, at his office in the city of Cincinnati, county of Hamilton, State of Ohio, between the hours of eight o'clock, A. M. and five o'clock, P. M. on said day; at which time and place the said plaintiff can attend, and cross-examine said deposition to be read on the trial of the above cause.

STORER & FOX, *att'ys for defendants.*

Cincinnati, 21st Nov., 1829.

The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *ads.* JOHN DOE, ex. dem. Edward White.	*In the United States' circuit court, 7th circuit, district of Ohio. In ejectment.*

Jacob Burnet, a witness produced and sworn, deposeth and saith, that he came to Cincinnati in the summer of the year seventeen hundred and ninety-six, and has resided there ever since. When deponent came to Cincinnati, he inquired what was the object of leaving the open space between Front street and the , and what now is called Broadway and Main street, and was informed it was given by the proprietors of the town as a common. It was commonly spoken of as the common, and called by that name. Deponent was a member of the first select council of the town of Cincinnati in the year eighteen hundred and two.

Question by defendant's counsel. Will you please state whether you was not a member of said council occasionally, subsequent to the year 1802, and

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whether said council was legislated on the subject of the common above referred to? if so, state your recollection on that subject.

Answer. I was subsequently a member of the select council, but do not recollect at what time; there was one or more ordinances passed by the select council for the protection and regulation of said common; and deponent recollects that several persons were cited before the council for a violation of said ordinance or ordinances; and it is the impression of deponent that Jacob White was one of them, but of this he will not be certain.

By same. Will you please state who acted as counsel for the president, recorder, and trustees of the town of Cincinnati in a suit in chancery brought by them against Joel Williams, a record of which is now shown to you, marked A? and will you also state your recollection of the depositions used in the hearing of that cause, and how many of the witnesses who deposed in said suit have discovered since giving their depositions?

Answer. I was the leading counsel in that suit; Mr. St. Clair was also employed with me. I cannot now recollect the exact number of depositions taken in that suit, but there were many, and I think all the depositions contained in the said record were used in said suit. It is my impression that Joel Williams's counsel objected to the reading of many of them, but that these objections were overruled by the court; and it is my impression that the objection was to the depositions of such of the witnesses as resided in town; of the witnesses, whose depositions are contained in said record, Daniel C. Cooper, William McMillan, Ephraim Kibby, Israel Ludlow, James Silver, Robert Patterson, John R. Mills, are dead, and I have heard that Melyn Baker is dead.

Question by same. Will you please state whether you have examined the original depositions aforesaid, now on file in the clerk's office of Hamilton county, and what you know as to the signatures to said depositions being in the handwriting of said deponents?

Answer. I have examined the signatures to the depositions of Daniel C. Cooper, Israel Ludlow, and Ephraim Kibby. I have been well acquainted with their handwriting, having seen them write frequently, and I have no doubt the signature to their depositions are in their proper handwriting.

Question by plaintiff's agent. In what year did the council take possession from Joel Williams, and exercise acts of ownership over that common?

Answer. I cannot possibly recollect, but my impression is that it was about the year eighteen hundred and eight.

Question by same. In what year did the select council commence legislating on the subject of the common?

Answer. I cannot possibly remember.

Question by same. At what time was Jacob White cited before the select council, and on what charge? and what proceedings were had on the occasion?

Answer. Some persons were cited before the council for violating the ordinance respecting the common. I believe Jacob White was one of the number, but I am not certain; I have no memorandum that will enable me to say in what year.

Question by the same. Who drew the decree against Joel Williams, and in favor of the corporation of Cincinnati?

Answer. I, being the leading counsel for the complainants', was requested by the court to draw the decree, and did draw it.

Question by the same. Did the court receive the decree as drawn by you without alteration, and execute and confirm the same?

Answer. I do not recollect whether any alterations were made or not. I recollect that, after I had drawn the decree, it was transcribed; but whether the court directed any alterations or not, I do not recollect.

Question by the same. Were the depositions of all the witnesses who resided in town objected to by the counsel of Joel Williams in the case of the corporation against him?

Answer. My impression is that they were. And further this deponent says not.

J. BURNET.

THE STATE OF OHIO, CITY OF CINCINNATI, ss.

I, Isaac G. Burnet, mayor of the city of Cincinnati aforesaid, not being attorney or of counsel for either of the parties in the foregoing suit, nor any way interested in the event of the same, do hereby certify that the foregoing deposition of Jacob Burnet was taken before me, at the mayor's office in said city, on the twenty-third day of November, eighteen hundred and twenty-nine, between the hours of eight o'clock, A. M. and five o'clock, P. M. of said day, at the instance of the defendants, in pursuance of the enclosed, to be read in evidence on the trial of the foregoing cause; that the said deposition was then and there reduced to writing by me, and so also subscribed by said deponent in my presence; and that the said deponent, by me carefully examined and cautioned, and sworn to testify the whole truth relating to the matters in controversy in said suit, that Jacob White, as agent of the plaintiff, attended at the taking of said deposition, and cross-examined the witness; and that the reason of taking said deposition is, that the evidence of the said deponent, at the city of Cincinnati aforesaid, is more than one hundred miles from Columbus, the place of trial; and being a member of Congress of the United States, was about to depart for Washington City.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this twenty-third day of November, eighteen hundred and twenty-nine.

Fees $1 50, paid by defendant. ISAAC BURNET, *Mayor.* [SEAL.]

To the introduction of which decree the said plaintiff objected, which objection was sustained by the court; to which opinion the said defendants except, and pray this their bill to be sealed.

The plaintiff then offered in evidence the deed marked I, from Matthias Denman to Joel Williams, dated the first day of May, 1798, viz:

This indenture, made this fourth day of March, in the year of our Lord one thousand seven hundred and ninety-five, between Matthias Denman, of Springfield, in the county of Essex, and State of New Jersey, of the one part, and Joel Williams, of the northwestern territory, in the town of Cincinnati, and county of Hamilton, of the other part, witnesseth, that the said Matthias Denman, for and in consideration of the sum of five hundred and fifty dollars, to him in hand paid by the said Joel Williams, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained, remised, released, and for

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ever quit claimed, and, by these presents, doth give, grant, bargain, remise, release, and for ever quit claim, unto the said Joel Williams, his heirs and assigns, for ever, all the one equal undivided third part of a certain tract of land, situate, lying, and being in the western territory, bounded on the west by the lands known by the name of Dayton sections, on the north by lands known by the name of James Henry's sections, on the east by Judge Symmes's sections, and on the south by the Ohio river, together with all and singular the rights, members, and appurtenances to the same belonging or in any wise appertaining: to have and to hold the above remised premises, with the appurtenances, unto the said Joel Williams, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said Joel Williams, his heirs and assigns, for ever: and the said Matthias Denman doth covenant and agree to and with the said Joel Williams, his heirs and assigns, that he, the said Joel Williams, his heirs and assigns, shall and may, from time to time, and at all times, quietly and peaceably, have, hold, occupy, possess, and enjoy the above remised premises, without the lawful let, interruption, molestation, or denial of him, the said Matthias Denman, or of any other person or persons claiming by, from, or under him.

In witness whereof, the said Matthias Denman hath hereunto set his hand and seal, the day and year first above written.

MATTHIAS DENMAN. [SEAL.]

Sealed and delivered in the presence of

JONA. DAYTON.

AARON DENMAN.

HAMILTON, ss.

Be it remembered, that, on the first day of May, A. D. 1798, before me, Thomas Gibson, one of the justices assigned to keep the peace for the said county, personally appeared Matthias Denman, who acknowledged the within instrument and signature to be his hand and seal, act and deed, for the purposes therein mentioned. In testimony whereof, I have set my hand and seal.

THO. GIBSON. [SEAL.]

Endorsement.—Received into the office, May 1, 1798; recorded May 1, 1798, in book No. 2, page 443.

GEORGE GORDON, *Recorder.*

The defendants also offered and read in evidence the paper marked J, which was admitted to be proved as the statute of the State required, being a copy of the location of the fraction 17, from the books of John C. Symmes to Matthias Denman, viz:

1791, April 4. Captain Israel Ludlow, in behalf of Mr. Matthias Denman, of New Jersey, presents for entry and location a warrant for one fraction of a section, or one hundred and seven acres and eight-tenths of an acre of land; by virtue of which he locates the seventeenth fractional section, in the fourth fractional township, east of the Great Miami river, in the first fractional range of townships on the Ohio river; No. of the warrant 192; Cincinnati stands partly on this fraction.

☞ There is a great deal more in this fraction than $107\frac{8}{10}$ acres, and near 160 acres, which has not been paid for all over $107\frac{8}{10}$.

I, Griffin Yeatman, recorder in and for the county of Hamilton, State of Ohio, do certify that the above is a true extract and copy taken from a manuscript book at the original entries of John Cleves Symmes, deposited in this office by authority of the Legislature of Ohio, to perpetuate testimony of the original entries and locations of lands within Symmes's purchase.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of my office, at Cincinnati, this 28th day of June, 1827.

GRIFFIN YEATMAN, *Recorder.* [SEAL.]

Samuel R. Miller, on examination by plaintiff, stated that he was informed by Robert Patterson, one of the original proprietors, that Israel Ludlow fixed the southeast corner of section 18, on the bank of the Ohio river, from notes of a survey of the meanders of the Ohio river previously made by him, and commenced laying out the town from that corner before the sections were surveyed; which corner is represented on the plat (K) by this mark ⅆ, viz:

[For plat, see original, page 68.]

Book No. 2, survey No. 34, surveyed Sept. 29, 1812; fraction No. 17, township 4, fractional range 1, in the Miami purchase.

THOS. HENDERSON, *Surveyor Ham. co.*

The plaintiff thereupon requested the court to instruct the jury on the several points in the paper hereto annexed, marked 1, 2, 3, 4, 5, 6, 7, and 8, on which points, except the numbers 7 and 8, the said court instructed the jury as prayed for, viz:

WHITE *vs.* CINCINNATI.—*Instructions asked by plaintiff.*

1st. That the deed from Symmes to Winton passes to him no title whatever in the land in controversy, and gives him no such interest therein as can be set up by these defendants as a defence in the action of ejectment.

2d. To enable the defendant to hold by virtue of a plat, they must produce that plat, or prove its loss. That it is not competent for them to give evidence of its contents until they have used diligence to produce it in court; and as no such evidence has been here produced, the testimony of witnesses stating the contents of a plat is not proper before the jury, and must be disregarded.

3d. If the jury believe that, in 1789, at the time of laying out the city, the proprietors thereof, had no title, legal or equitable, to the spot of ground in controversy, and no authority to dispose of it, that any appropriation which they may have made of it at that time, either by word, (or by plat,) is void and ineffectual, and can pass no title to these defendants.

4th. That if the said proprietors did appropriate said ground, having no title thereto, and afterwards acquired an *equitable title only*, that *equitable title* could not enure so as to vest a legal title in the city or citizens, and enable them to defend themselves in an action of ejectment brought against them by the person holding the legal title.

5th. That to enable the city to hold this ground, and defend themselves in this action by possession, they must show an unequivocal, uninterrupted possession for at least twenty years.

6th. Report or reputation that this ground was a common, does not make it so, unless such reputation existed for time, whereof the memory of

men runneth not to the contrary, and has been accompanied with possession or some exercise of right, and has been undisputed.

7th. If this appropriation were actually made so as to pass the fee in the land to the city, as their title was not placed upon record, the present plaintiff could not be affected by it, unless notice, express or implied, be proved to him before his title accrued; and to all and each of the persons through whom he derives his title before their titles severally accrued.

8th. And that it is not sufficient proof of notice to show that a party lived in the city, and that the thing was a matter of general notoriety in that city. To all of which said instructions, the said defendant also excepts, and prays thus their bill be sealed.

The plaintiff further gave in evidence the depositions of Thomas Mounts, William T. Cotten, and Elmore Williams, (number 11,) and of Colvin Washburn, (12,) and of Charles Fox, (13,) viz:

EDWARD WHITE, *vs.* THE PRESIDENT, RECORDER, and TRUSTEES of Cincinnati.

The defendants or their counsel will please take notice that I shall proceed to take the depositions of Thomas Mounts and others, before the mayor of the city of Cincinnati, on Tuesday, the eighth day of this instant, and to continue by adjournment from day to day, until I take all that I deem necessary to be read in evidence on trial of the above cause.

JACOB WHITE,
Agent for Edward White, of Missouri.

7th December, 1829.

JOHN DOE, ex dem. Edward White, *vs.* The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati. } *In the United States' circuit court, seventh circuit, district of Ohio. In ejectment.*

Depositions on the part of the plaintiff, taken at the mayor's office, in the city of Cincinnati, on the eighth day of December, eighteen hundred and twenty-nine.

Thomas Mounts, a witness produced and sworn on the part of the plaintiff, deposes and says, that he was present when Matthias Denman, Robert Patterson, and John Filson, met on the bank on the north side of the Ohio river, and commenced to lay out the town then called Losanteville, and laid out a tier of lots on the north side of Front street, between Main street and Eastern row; and this deponent was present when some person asked the said proprietors what they were to do with that fraction of ground lying between Front street and the Ohio river, and above Main street; one of them answered, we will reserve that for future sale, when the town is settled that will be very valuable; to which answer the other proprietors present agreed that it should be reserved for future sales for the benefit of the proprietors. The tier of lots on Front street were called donation lots; the above transaction took place in the fall of the year seventeen hundred and eighty-eight. Deponent states that his permanent residence is in Switzerland county, in the State of Indiana.

Question by defendant's counsel. In what month was the conversation had above referred to?

Answer. It was in September, as well as I remember

By same. Where did you first meet with Denman, Patterson, and Filson?

Answer. Right immediately on the river bank (it was one evening between sundown and dark) in front of the present city of Cincinnati.

By same. How long did you reside in Cincinnati? and how long did Denman, Filson, and Patterson stay in Cincinnati at the time above referred to?

Answer. The next morning after the above conversation, myself, Denman, Patterson, Filson, and between fifty and sixty others, travelled back into the country to view it; we travelled until we struck the Big Miami river at that place. Judge Symmes, Patterson, Filson, and some others, travelled down on the Miami, and the balance of the party, including myself, went further up the Miami. I understood Filson was killed by the Indians before the party had reached the Ohio river; I never saw him afterwards. After we had made our route, the party I was with returned to the place from whence we started, and crossed the river, and home to Kentucky. I then lived 60 or 70 miles from the river. After some families had made permanent settlements in Cincinnati, I was here occasionally two or three times a year for some years afterwards.

By same. Was you present at the drawing of the lottery for lots in Cincinnati—I mean the donation lots?

Answer. I was not, and know nothing about them; I understood the lots on the north side of Front street were donation lots.

THOMAS MOUNTS.

Also, at the same time and place, appeared William T. Cullum, who being of lawful age, and first duly sworn to tell the whole truth, deposeth and saith, he came to Cincinnati on the 16th November, in the year 1791; at that time I think the ground in front of Front street and east of Main street was not then occupied or improved. Afterwards, part of the ground was enclosed from Main street up towards Sycamore, but whether it reached Sycamore I cannot state; the time of enclosing I cannot recollect; I think it was a post and rail fence.

Question by plaintiff's agent, Jacob White. What is your understanding respecting the original plat of Cincinnati, in which you understood the ground south of Front street and east of Main street was laid out into lots, and which plat Israel Ludlow asked Joel Williams for a sight of, and, when he got it, refused to return it? The counsel for defendants object to this question.

Answer. I have heard Joel Williams say that Israel Ludlow came to him, and asked him to let him look at the original plat of the town of Cincinnati in his possession; that he let him have it; that Ludlow took it away, and he never could see it afterwards. I understood from said Williams that he owned the above described ground now in dispute, but have no recollection as to its being laid out into lots. (Answer objected to by defendants as hearsay.)

Question by same. Was you acquainted with the brick house at the corner of Front and Main street, first occupied as a store, and afterwards as the council chamber? if so, state what it would rent for from that year, 1808, to the present.

Answer. I should suppose that, for the last eight years, such a house would rent for three hundred dollars per year.

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Question by defendant's counsel. Where have you been living since your first landing in November, 1791?

Answer. I never lived in Cincinnati; I lived at North Bend from 1791 to 1795; since 1795 I have lived about six miles distant from Cincinnati, but have been in Cincinnati back and forth almost every week since.

By same. Was *that* the ground east of Main street and south of Front street generally called a common since you have known it by the inhabitants of Cincinnati?

Answer. It has been so called, and more particularly so since the suit between Joel Williams and the town of Cincinnati.

By same. What have you heard Israel Ludlow, or any other of the original proprietors of Cincinnati, say about this piece of ground being originally given for public uses?

Answer. I don't know that I have ever conversed with any body on that subject.

WM. T. CULLUM.

Also, at the same time and place, appeared Elmore Williams, who being of lawful age, and sworn to tell the whole truth, saith, that he landed in Cincinnati in the month of April, 1794, and has lived here ever since; that in the year 1803 or '4, I am not certain which year, though I think it was in 1803, built a brick house at the corner of Main and Front street in Cincinnati, binding on Front street north and on Main street west, for Joel Williams; the size of the house was 25 or 30 feet in Front street, and about 35 feet on Main street, a stone cellar, and two stories of brick. The lot was enclosed south of the house by a board fence, on and about 50 feet, and far enough east of the house so as to embrace a small alley, to the best of my recollection. It was occupied as a store by Henry Weaver for several years afterwards, and afterwards as a council house. Part of the ground east of the house was occupied by Charles Fox as a board yard; the exact quantity occupied, and the time it was occupied, I cannot tell. I have no recollection of any objection being made, during the building of the house, by any person, and considered him in the peaceable and quiet possession of the premises.

Question by Jacob White, agent of plaintiff. What do you believe said house would have rented for the last 15 years?

Answer. From 1815 to 1820, I should say about $250 per annum; from 1820 to 1825, $450 per annum; from 1825 to 1830, $500 per annum.

By same. Are you acquainted with the rents of houses in Cincinnati?

Answer. I am.

Question by defendants' counsel. Was you acquainted with John Dailey, and do you know when he moved from Cincinnati?

Answer. I was acquainted with him, he moved about 1813 or 1814; and further deponent saith not.

ELMAR WILLIAMS.

THE STATE OF OHIO, CITY OF CINCINNATI, ss.

I, Isaac G. Burnet, mayor of the city of Cincinnati aforesaid, not being attorney or of counsel for either of the parties in the foregoing suit, nor in any way interested in the event of the same, do hereby certify that the foregoing depositions of Thomas Mounts, William T. Cullum, and Elmer Williams, were taken before me at the mayor's office in said city, on the

eighth day of December, eighteen hundred twenty-nine, at the instance of the plaintiff, in pursuance of the enclosed notice to be read in evidence on the trial of the case, &c.; that Charles Fox, Esq., attorney for the defendants, was present at the taking thereof; that the first part of the first deposition was then and there reduced to writing by me; and at the suggestion and by the request of the said Charles Fox, the residue of the writing was removed to another place, the mayor's office at the time being very much thronged; and by consent of the plaintiff the residue of said depositions was reduced to writing by the said Charles Fox, attorney for defendant; that the said depositions were subscribed by the said deponents respectively at the mayor's office, and that the said deponents were sworn and cautioned to testify the whole truth relating to the matter in controversy in said suit; and that the said Charles Fox, acting as attorney for the defendants, agreed that the said depositions, so taken as aforesaid, should be read in evidence on the trial of the said cause, without any exception to the manner of taking; and I do further certify that the reason of taking said depositions is, that the said deponents reside in the county of Hamilton, Ohio, more than one hundred miles from Columbus, the place of trial.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this eighth day of December, eighteen hundred and twenty-nine.

ISAAC G. BURNET, *Mayor.* [SEAL.]

JOHN DOE, ex dem. Edward White, *versus* The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati. } *United States' circuit court, seventh circuit, district of Ohio. In ejectment.*

Elmor Williams, a witness produced and sworn on the part of the plaintiff, deposes and says, that he is acquainted with the lots which Joel Williams sold to John Dailey twenty-five or thirty years ago; it is situate on Front street, in Cincinnati, on the south side of Front street, directly opposite to lot number seventy-six. Deponent was told by Joel Williams in his lifetime, that he, Joel Williams, had sold said lot to said Dailey, and Dailey offered to sell it to deponent between twenty-five and thirty years ago. Edward White erected a frame building with a cellar for a warehouse, from twelve to eighteen years ago, on said lot, which was afterwards pulled down by a great number of men in the night. There was another building erected on said lot, which was also pulled down, and, as I understood, by an order of the corporation; said lot has since been dug down by order of the corporation, and paved, and converted into a wharf; and further this deponent saith not.

ELMOR WILLIAMS.

Calvin Washburn, a witness produced and sworn on the part of the plaintiff, deposes and says, that he is acquainted with the lot lying on the south side of Front street, in Cincinnati, directly opposite lot number seventy-six; there was a building erected on said lot as early as the year eighteen hundred and twelve; I rented the building of John McIntire in the summer of the year eighteen hundred and fourteen; I held it under Edward White, to whom I paid the rent, and continued to occupy it for two years, and left it in consequence of an intimation from a citizen that it would probably be pulled down; I left it the same day I received that intimation, if I recollect

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right, and the next night it was demolished; said lot has since been dug down by the corporation, and paved, and now constitutes a part of the wharf; and further deponent says not.

CALVIN WASHBURN.

Richard Mulford, a witness produced and sworn on the part of the plaintiff, deposes and says, that he is wharf-master by virtue of an appointment from the city council of the city of Cincinnati, and collects the wharfage for the wharf lying south of Front street, between Main street and Broadway, in Cincinnati. Deponent has been wharf-master about three months, and in that time he has collected about five hundred dollars wharfage; and further deponent saith not.

R. MULFORD.

THE STATE OF OHIO, CITY OF CINCINNATI, ss.

I, Isaac G. Burnet, mayor of the city of Cincinnati aforesaid, not being attorney or counsel for either of the parties in the foregoing suit, nor in any way interested in the event of the *time*, do hereby certify that the foregoing depositions of Elmor Williams, Calvin Washburn, and Richard Mulford, were taken before me at the mayor's office in said city, on the twenty-fifth day of November, eighteen hundred and twenty-six, between the hours of two and five o'clock, P. M. of same day, in pursuance of the enclosed notice at the instance of the plaintiff; that the depositions were reduced to writing by me at the said time and place, and so also subscribed by them, the said deponents, respectively, in my presence, the same deponents being by me first duly sworn according to law, and carefully examined and cautioned to testify the whole truth relative to the matters in controversy in said suit; that the reason for taking said depositions was, that the residence of the said deponents, at the city of Cincinnati aforesaid, is at a greater distance than one hundred miles from Columbus, the place of trial.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this twenty-fifth day of November, eighteen hundred and twenty-six.

ISAAC G. BURNET, *Mayor.* [SEAL.]

Witnesses' fees, - -	$1 00
Mayor's do., - -	1 00
Mar. - - -	75
	$2 75 *Paid by plaintiff.*

EDWARD WHITE, *versus* PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati.

The defendants, or their counsel, will please to take notice, that I shall proceed to take the depositions of Charles Fox and others before William N. Kirkwood, Esq., justice of the peace in Warren county, Ohio, at his house, in the village of Palmyra, on Thursday, the twelfth instant, and so on by adjournment from day to day, until I take all the depositions I deem necessary to be read in evidence in the trial of the above cause.

JACOB WHITE,
Attorney in fact for plaintiff.

November the 10th, 12 o'clock, 1829.

Service acknowledged.

STORER & FOX,
Attorneys for the defendants.

We agree to waive the county seal, and admit Wm. R. Kirkwood is a magistrate.

STORER & FOX, *Att'ys.*

JOHN DOE, ex dem. Edward White,
versus
The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati.

7th circuit court of the United States in and for the district of Ohio.

The deposition of Charles Fox, of lawful age, taken before me, William N. Kirkwood, a justice of the peace in and for Warren county, State of Ohio, taken at my house in the town or village of Palmyra, in said county, at the request of the plaintiff, and in the presence of the counsel for the defendants. The said Charles Fox being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, between the parties, deposeth and saith: about the year one thousand eight hundred and three or four I came to Cincinnati, and purchased a house and lot on Front street prior to his moving to Cincinnati, and I lived in said house for the term of seven years, during which time I occupied the open ground in front of said house for the term of eighteen months, at the permission of Joel Williams, who claimed the ground; I likewise asked permission of all the persons on Front street, between Sycamore and Main street, that is, Jesse Hunt, William Stanley, Samuel Still, and Martin Baum; and deponent further saith, that Joel Williams began to enclose said lot in front of my house, while I was living in Cincinnati, with a post and rail fence, and at night there was part of said fence thrown down, and said Joel Williams proceeded to put up the fence round said lot, until he enclosed the whole ground between Main street and Sycamore, and between Front and the bank of the river, and it remained enclosed for some time, but he cannot tell how long; it might have stood a year, but I do not think it did; but by what authority it was thrown or taken down I do not know.

Question by defendants' counsel. Will you state the reason why you asked permission to occupy said ground of the persons living on Front street, as above stated?

Answer. Because they contended that it was public ground.

By same. Will you please state for what purpose you occupied the ground?

Answer. I occupied it as a board yard, and had two hundred thousand feet of pine boards stacked on said lot at one time.

By same. Can you state how long, after you had sold out your boards, it was before Joel Williams began his fence?

Answer. I am pretty confident that the frame was put up and taken away before I put my boards on the lot, or before I occupied it for a board yard.

By same. At what time did you occupy said ground?

Answer. I think I lived there three years before I went up the river after the lumber, and put the boards on when I came back.

By same. What rent did you pay, if any, and to whom, for the ground?

Answer. Not a cent to no man.

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By same. Will you please state whether said ground was generally called a common by the people of Cincinnati at the time you resided there, so far as you know?

Answer. Some said it was public ground, some said it was Joel Williams's; and Joel Williams claimed it to be his.

By same. Will you state how much of said ground you occupied, and whether you put in any boards except what you brought down or purchased the one season?

Answer. I occupied from Sycamore street to Main street, I did not only the one season.

By same. Was your raft the first raft brought to Cincinnati?

Answer. I am not positive about it.

By same. Do you know whether the town council of Cincinnati claimed any control over said ground when you lived there?

Answer. I do not know any thing about it. And further this deponent saith not.

CHARES FOX.

Fees paid by plaintiff's attorney for plaintiff, seventy-five cents.

Sworn to and subscribed before me, Wm. N. Kirkwood, a justice of the peace as aforesaid, certified under my hand and seal, at the township of Deerfield, in the county of Warren aforesaid, on this twelfth day of November, A. D. 1829.

WM. N. KIRKWOOD, *J. P.* [SEAL.]

The defendants therefore requested the said court to instruct the jury in the several points in the paper hereto annexed, 1, 2, 3, 4, and 5, the first and second of which instructions the court gave, remarking to the jury that they could infer the delivery of the deed referred to from circumstances, the 3d, 4th, and 5th instructions the said court refused to give, and substituted, instead of the 5th instruction, that which accompanied and follows the same, viz:

Instructions asked by defendants.

1. That the jury must be satisfied from the evidence that the deed from Jacob White to Edward White, dated 28th October, 1824, was actually delivered by said Jacob White to said Edward White at the time it was executed, or some time before the commencement of this suit; and that the mere recording of the said deed by a third person, unaccompanied by the possession thereof by said Edward White, at some period previous to the commencement of this suit, is no evidence of the delivery.

2. That where the grantee of a deed is not present at the time of its execution, and there is no proof of a consideration being paid by him for the conveyance, his assent to the same must be expressly proved at some subsequent period, before the said deed can be operative to transfer a title.

3. That the deed from John C. Symmes to Mathias Winton, dated 16th August, 1795, for lot No. 27, in Cincinnati, conveyed and transferred all the interest and estate of said Symmes in and to the said common to said Winton.

4. That if said deed from said Symmes to said Winton did not absolutely convey the fee in said common, the right of way thereon was for ever transferred to said Winton, his heirs and assigns; and that the defendants are not

guilty of any trespass of which the plaintiff can complain, and therefore the said plaintiff cannot maintain an action of ejectment against them.

5. That it was competent for the original proprietors of the town of Cincinnati to reserve and dedicate any part of said town to public uses, without granting the same, by writing or deed, to any particular person, by which reservation and dedication the whole estate of said proprietors in said land, thus reserved and dedicated, became the property of, and was vested in, the public for the purposes intended by said proprietors; and that, by such dedication and reservation, the said original proprietors, and all persons claiming under them, are estopped from asserting any claim or right to the said land thus reserved and dedicated.

5. That it was competent for the original proprietors of the town of Cincinnati to reserve and dedicate any part of said town to public uses, without granting the same, by writing or deed, to any particular person, by which reservation and dedication the right of use to such part is vested in the public, for the purposes designated, but that such reservation and dedication do not invest the public with the fee.

To all which the defendants except, and pray this their bill to be sealed.

JOHN McLEAN.
J. W. CAMPBELL.

The following depositions were filed as evidence in this cause, to wit:

The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *ads.* JOHN DOE, ex dem. Edward White.	*Seventh circuit court of the United States in and for the district of Ohio. In ejectment.*

Thomas Williams, a witness produced on the part of the defendants, being duly sworn to tell the truth, the whole truth, and nothing but the truth, between the above parties, deposeth and saith, he first came to Cincinnati in the 1789, and continued at the place until after Harmis's campaign, which he thinks was in 1790; that he was at the place occasionally from 1790 until 1794, and from this latter period he has remained in said city and near it ever since; that the ground lying between Front street and the Ohio river, and between Main street and Broadway, was, from the time he first knew it, called and known by the name of the common; he never heard it called by another name.

Question by defendants' counsel. Will you please state whether you have ever heard Joel Williams, John C. Symmes, or Israel Ludlow speak of said piece of ground? If so, please state what they, or either of them, said respecting said ground, and the reasons for leaving it public.

Answer. I do not recollect particularly.

Question by same. Will you state what the common report or reputation of the people in Cincinnati, from 1789 to 1795, '6, or '7, was, as to said ground being a public common?

Answer. It was generally called so by every body I heard speak of it at that time. Deponent further says that he is a resident and freeholder in the city of Cincinnati.

THOS. WILLIAMS.

The plaintiff, by his attorney, objects to this deposition on account of the interest of the witness.

THE STATE OF OHIO, CITY OF CINCINNATI, ss. 436.

I, Isaac G. Burnet, mayor of said city, not being attorney or of counsel for either of the parties in the foregoing suit, nor in any way interested in the event of the same, do hereby certify that the foregoing deposition of Thomas Williams was taken before me, at the mayor's office, in said city, on the nineteenth day of December, eighteen hundred and twenty nine, at the instance of the defendants; that said deposition was taken without any notification in writing by the assent of the counsel for both parties; that said deposition was then and there reduced to writing by Charles Fox, by the assent of counsel for both parties, and was then and there subscribed by said deponent in my presence; that said deponent was by me carefully examined, and cautioned, and sworn, to testify the whole truth relative to the matters in controversy in said suit; and that the reason for taking said deposition is, that the residence of the said deponent, in the said city of Cincinnati, is more than one hundred miles from Columbus, the place of trial.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this nineteenth day of December, eighteen hundred and twenty-nine.

ISAAC G. BURNET, *Mayor.* [SEAL.]

Mayor's fees, 75 cents,
Marshal's 27½

102½ cts. paid by defendants.

Mr. Miller will prove, that, in the year 1791 or 1792, he applied to John C. Symmes to purchase a piece of ground in what is called the town common of Cincinnati, for the purpose of establishing a ferry; he also applied to Israel Ludlow for the same purpose. J. C. Symmes stated to him that he could not sell him the ground; that it was a part of the town common, and that he had no right to it. Israel Ludlow informed him that it was a part of the common, and he abandoned all idea of making a purchase.

Statement of Ichabod B. Miller admitted as evidence by consent of counsel, December 29th, 1829. The witness having been under subpœna, did not attend.

Lessee of EDWARD WHITE,
vs.
The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati.

Circuit court of the United States for the 7th circuit, and district of Ohio. In ejectment, for ground in Cincinnati between Front street and the river.

The defendants and their counsel will please take notice, that, on the 22d instant, between the hours of two and five in the afternoon of said day, before Isaac G. Burnet, mayor of the city of Cincinnati, I shall proceed to take the deposition of Moses Coffin and others, to be read in evidence on the trial of this cause; at which time and place you can attend and cross-examine said witness if you choose.

Yours, &c., EDWARD WHITE,
Dec'r 21, 1829. *By Caswell & Starr, att'ys for plff.*

Received notice of the above this evening, 8 o'clock, 21st Dec 1829.
STORER & FOX, *attorneys.*

Lessee of EDWARD WHITE,
vs.
The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati.

United States' circuit court, seventh circuit, district of Ohio. In ejectment.

The deposition of Moses Coffin, taken before the mayor of the city of Cincinnati. The said Moses Coffin, being duly affirmed, deposes and says, that he is wharf-master in the city of Cincinnati, and, as such, it is his duty to superintend the wharf south of Front street and between Main street and Broadway, in said city, and to receive the wharfage. Deponent received said appointment on the thirtieth day of January, eighteen hundred and twenty-eight; and deponent further says, that, between the thirty-first day of January, eighteen hundred and twenty-eight, and the first day of December, eighteen hundred and twenty-nine, he has received for wharfage, and paid over to the treasurer of said city, the sum of nine thousand eight hundred dollars; all of which was collected at said wharf, except from three to five hundred dollars which was collected at other places. And further deponent says not.

MOSES COFFIN.

THE STATE OF OHIO, CITY OF CINCINNATI, ss.

I, Isaac G. Burnet, mayor of the city of Cincinnati aforesaid, not being attorney or of counsel for either of the parties in the foregoing , nor in any way interested in the event of the same, do hereby certify that the foregoing deposition of Moses Coffin was taken before me, at the mayor's office, in said city, on the twenty-second day of December, eighteen hundred and twenty-nine, between the hours of two and five o'clock in the afternoon of said day, at the instance of the plaintiff, to be used in evidence on the trial of the above cause, in pursuance of the enclosed notice; that the said deposition was then and there reduced to writing by me, and so also subscribed by the said deponent in my presence; and that the said deponent was by me carefully examined, and cautioned and affirmed to testify the whole truth relative to the matters in controversy in said suit; that the reason of taking said deposition is, that the residence of the said deponent, at said city, is more than one hundred miles from Columbus, the place of trial.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this twenty-second day of December, eighteen hundred and twenty nine.

ISAAC G. BURNET, *Mayor.* [SEAL.]

The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati,
ads.
JOHN DOE, ex dem. Edward White.

United States' circuit court, seventh circuit, district of Ohio. In ejectment.

The plaintiff, in the above cause, or his attorney, will take notice that the deposition of Nathan Guilford and others, residents of Cincinnati, will be taken before the mayor of the city of Cincinnati aforesaid, at his office, in said city, on Saturday, the 25th day of November instant, between the hours of two o'clock and five o'clock, P. M. of said day, to be read in evidence for the defendants on the trial of this cause.

D. K. ESTY & B. STORER,
Attorneys to defendants.

Cincinnati, Nov. 22, 1826.

I acknowledge service. Cincinnati, November 23, 1826.

EDWARD WHITE,
By his attorney in fact, Jacob White.

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The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *ads.* JOHN DOE, ex dem. Edward White. } *United States' circuit court, seventh circuit, district of Ohio. In ejectment.*

Nathan Guilford, a witnesss produced and affirmed on the part of the defendants, deposes and says, as follows:

Question by defendants' counsel. Do you know any thing of the existence of a deed made by Jacob White to Edward White, in the year eighteen hundred and twenty-four, for the lot in controversy?

Answer. I have no knowledge or recollection of any such deed.

Question by same. Did you ever see such a deed?

Answer. Not to my recollection. And further deponent saith not.

NATHAN GUILFORD.

James W. Gazley, a witness produced and affirmed on the part of the defendants, deposes and says, as follows:

Question by defendants' counsel. Do you know any thing of the existence of a deed from Jacob White to Edward White, made in the year eighteen hundred and twenty-four, for the lot in controversy?

Answer. I do not.

Question by the same. Did you ever see such a deed?

Answer. Not to my knowledge. And further deponent saith not.

JAMES W. GAZLEY.

THE STATE OF OHIO, CITY OF CINCINNATI, ss.

I, Isaac G. Burnet, mayor of the city of Cincinnati aforesaid, not being attorney or of counsel for either party in the foregoing suit, nor in any way interested in the event of the same, do hereby certify that the foregoing depositions of Nathan Guilford and James W. Gazley were taken before me, at my office, in said city, on the twenty-fifth day of November, eighteen hundred and twenty-six, between the hours of two and five o'clock, P. M., of said day, in pursuance of the enclosed notice at the instance of the defendants; that the said depositions were reduced to writing by me at said time and place, and so also subscribed by the said deponents respectively in my presence, the same deponents being by me first duly sworn according to law, and carefully examined and cautioned to testify the whole truth relative to the matters in controversy in said suit; and that the reason for taking said depositions was, that the residence of the said deponents at Cincinnati aforesaid is at a greater distance from Columbus, in said State of Ohio, the place of trial, than one hundred miles.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this twenty-fifth day of November, eighteen hundred and twenty-six.

ISAAC G. BURNET, *Mayor.* [SEAL.]

And thereupon the defendants, by their attorney, filed a certain bond, with security, conditioned for the prosecution to effect of a writ of error to the Supreme Court of the United States, and for the payment of all costs, &c.; and the court having seen said bond, are satisfied the same is sufficient; and it is ordered that a writ of error be allowed, and that a citation issue upon the application of the defendants; which said bond is in the words following:

Know all men, that the 'city of Cincinnati,' representing the president, recorder, and trustees of the city of Cincinnati, Dan. Stone, jr., Bellamy Storer, Samuel R Miller, and Septimus Hazen, are holden, and stand firmly bound unto Edward White, in the just sum of five hundred dollars, lawful money of the United States, to be paid to the said Edward White, his heirs, executors, administrators, and assigns, for the payment whereof well and truly to be made, they bind themselves, their heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with their seals, dated this second day of January, Anno Domini 1830.

The condition of the above obligation is, however, such, for that whereas the said Edward White, in the name of John Doe, ex dem. Edward White, hath, at the December term of the circuit court of the United States for the seventh circuit, in the district of Ohio, held at Columbus, in said district, and commencing on the fourth Monday of said December, Anno Domini 1829, recovered judgment in action of ejectment against the said president, recorder, and trustees of the city of Cincinnati, for part of lot No. 465, in said city; and whereas the said defendants have procured the allowance of a writ of error, to remove the record and proceedings in said cause to the Supreme Court of the United States: Now, if the said defendants shall well and truly prosecute their said writ of error to effect, and pay all costs that may accrue thereon, provided the said judgment should be affirmed in said Supreme Court, if said plaintiff, then this obligation to be void, otherwise to be and remain in full force and virtue.

The city of Cincinnati by the president of the city council.

DAN. STONE. [SEAL.]
SAM'L R MILLER. [SEAL.]
BELLAMY STORER. [SEAL.]
SEPTIMUS HAZEN. [SEAL.]

Signed, sealed, and delivered, in presence of

Endorsed, "Approved January 2, 1830.

JOHN McLEAN."

THE UNITED STATES OF AMERICA, DISTRICT OF OHIO, set.

I, William Miner, clerk of the seventh circuit court of the United States in and for the district of Ohio aforesaid, do hereby certify the foregoing to be a true transcript of the record, judgment, and proceedings thereon, in a suit determined in said court, in which John Doe, ex dem. Edward White, was plaintiff, and the president, recorder, and trustees of the city of Cincinnati, were defendants, as the same now stand among the files of my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, this first day of June, Anno Domini eighteen hundred and thirty, and of the independence of the United States of America the fifty-fourth.

Attest: WILLIAM MINER, *Clerk.* [L. S.]

This transcript and seal, $90.

THE UNITED STATES OF AMERICA.—*To the honorable the judges of the circuit court of the United States for the seventh circuit, and district of Ohio, greeting:*

Whereas, in the record and process, and also in the rendering judgment in a certain action of ejectment which was in the said court, between John Doe, ex dem. Edward White, plaintiff, and the president, recorder, and

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trustees of the city of Cincinnati, defendants, manifest error hath intervened, as it is said, to the great damage of the said the president, recorder, and trustees of the city of Cincinnati, as by their complaint we are informed, and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court, so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the honorable John Marshall, chief justice of the United States of America, this second day of January, in the year of our Lord one thousand eight hundred and thirty, and in the fifty-fourth year of the American independence.

Attest: WILLIAM MINER, *Clerk.* [L. S.]

I, John McLean, one of the associate judges of the Supreme Court of the United States, do allow this writ of error. Witness my hand and seal, the 2d January, A. D. 1830.

JOHN McLEAN. [SEAL.]

I acknowledge service of this citation.
Jan'y 2, 1830. T. EWING, *for pl'ff.*

THE UNITED STATES OF AMERICA.—*Supreme Court of the United States, to John Doe, ex dem. Edward White, greeting:*

Whereas the president, recorder, and trustees of the city of Cincinnati obtained the allowance of our writ of error to the circuit court of the United States for the seventh circuit and district of Ohio directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the second Monday in the month of January next, the record of a certain plaint, process, proceedings, and judgment in an action of ejectment, wherein you, the said John Doe, ex dem. Edward White, in that action lately recovered against the said the president, recorder, and trustees of the city of Cincinnati, judgment and costs, as by the said record in the said circuit court and district aforesaid, remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said the president, recorder, and trustees of the city of Cincinnati, we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the second Monday in the month of January next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable John Marshall, chief justice of the United States of America, this 2d day of January, in the year of our Lord one thousand eight hundred and thirty, and in the 54th year of the American independence.

Attest: WILLIAM MINER, *Clerk.* [SEAL.]

I acknowledge service of the within. January 2, 1830.
T. EWING, *for pl'ff.*